



2013 All-Fellows Luncheon



▲ All Fellows Luncheon panel.

Steven Hoort, Co-Editor

Grant Stein of Alston & Bird opened this year's All Fellows Luncheon, noting it had been 40 years since the NCBJ was in Atlanta and harkening back to the heady days leading up to the passage of the Bankruptcy Reform Act of 1978. Grant then introduced this year's four speakers, all former and now retired Bankruptcy Judges.

Judge Judith Fitzgerald, of the W.D. Pa., is now serving a tenured position at the Indiana Tech Law School. She wants to be called "Judy". Judge J. Rich Leonard, of the E.D.N.C., is now dean of Campbell University's Norman Adrian Wiggins School of Law. He says he is not a judge anymore and to call him "Rich" or "Dean Leonard." Judge Leif Clark, of the W.D. Tex., now does mediation and

consulting and wants to be called "Leif". Judge Arthur Gonzalez, of the S.D.N.Y., is now a Senior Fellow at New York University School of Law. He says he has given up correcting people but he prefers to be called "Arthur" or "professor."

The former judges attributed their reasons for leaving the bench to finances, better opportunities elsewhere, fatigue, the desire to do something else, and the changing role of the U.S. Judiciary. Judge Clark noted he was on the bench for 25 years, and he loved it, but now he is loving the reboot. Judge Fitzgerald noted the bench is isolating.

The former judges thought the new members of the bench would be coming from those who are independently wealthy, not the primary bread winner, or those who are later in life. Judge Gonzalez noted there is a lot of institutional knowledge and that is not going to change because any one judge leaves. Judge Clark agreed, noting the job shapes you. All of the judges either denied having inside knowledge of their former colleague judges' views or opined if they had such knowledge they would keep that information private.

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▲ All-Fellows Luncheon attendees.

Upcoming Circuit Events.

January 23, 2014

Annual 9th Circuit Fellows Dinner
Los Angeles, CA

January 23, 2014

11th Circuit Educational Panel and Reception
Atlanta, GA

January 24, 2014

1st Circuit's Annual Dinner
Boston, MA

February 4, 2014

2nd and 3rd Circuits Joint Reception
New York, NY

March 13-15, 2014

Class 25 Induction Ceremony & Related Events
Washington, DC

May 10, 2014

5th Circuit Seminar
New Orleans, LA

For details and registration information for these and other regional events, please visit the College website homepage at www.amercol.org under the "Upcoming Events" column. If you know of an upcoming event that is not listed, please let Shari Bedker know at sbedker@amercol.org.



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Chair's Column

D.J. (Jan) Baker, Chair



▲ D.J. (Jan) Baker

We are delighted that 33 exceptionally well-qualified candidates were selected by the Board of Regents at our fall meeting to become Fellows of the College. They will be inducted at our meeting in Washington in March, and their diverse backgrounds and experience will enrich the College for years to come. In that regard, new Fellows often ask, "What does the College do?"

Each issue of College Columns endeavors to keep Fellows up to date on the College's activities. The report in this issue from our president, Mike Cook, for example, gives a great overview of some of the key activities of the College: Support for pro bono programs; educational programs; the College's archives project; and our Patron-Sponsor program and the College's charitable foundation. Likewise, the report from Chris Meyer, the chair of the Board of Regents, provides a full update on the new Fellows who were just elected and the plans for their induction in Washington next March.

In addition, beginning with this issue, we have begun to include summaries of the minutes of board meetings, to give Fellows more insight into what is going on in the College. The Board meets in person twice a year, and at least twice or more often telephonically as well. As indicated in the minutes, at the March meeting, the directors discussed reports from the Pro Bono, Archives, Education, Visibility, Policy, Liaison, International, Distinguished Law Student, and other committees; reviewed the status of the College-supported Second Edition of Ken Klee's magisterial book on bankruptcy decisions of the Supreme Court; approved publishing and distributing to all Fellows circuit surveys of both business and consumer bankruptcy decisions of note; and considered a variety of other issues.

Of course, like most non-profit groups, the Board also spent a fair amount of time talking about the finances of the College. Roughly half of the College's budget each year goes to fund pro bono bankruptcy programs or projects, which must rank as one of its finest accomplishments. We be-

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President's Column

Michael L. Cook, President



▲ Michael L. Cook

Public service, participation and transparency best describe the College's activities this past year. In particular, the College's pro bono and education projects continue to grow and thrive.

Pro Bono. The Pro Bono Committee, which administers funds from the College and the Foundation, received forty grant applications seeking \$378,000 this past year. Although the College had budgeted \$250,000 for pro bono grants, the Committee approved grant requests totaling \$310,000. To make up the gap between the budget and the approved requests, the boards of the College and the Foundation authorized additional funding from unused discretionary funds and from a modest operating surplus. For the year 2014, the College's board increased the pro bono budget to \$310,000. The College will be contributing \$210,000 and the Foundation \$100,000. At these funding levels, the College and Foundation are undoubtedly the nation's largest provider of funding for bankruptcy legal services to indigent consumer debtors.

Education. Thanks to the efforts of our education and events committees, every Circuit has conducted quality educational programs over the past year. For example, the Ninth Circuit conducted a unique negotiation competition. The Fifth Circuit is planning a quality program this coming Spring on municipal and cross border bankruptcy cases. The Circuit programs typically include a social activity for Fellows (e.g., cocktail party or dinner).

Fellows will also soon receive updated copies of the College's important Circuit Review of recent case law and Best Practices reports. These immensely practical guides will cover business and consumer cases.

Archives/History. The College's archives at the University of Pennsylvania continue to attract in-person and on-line visits by Fellows. The Archives Committee has successfully made available important historical materials on-line. Oral histories of significant professionals continue. Recent editions of *College Columns* have excerpted fascinating interviews with

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College Files Amicus Brief for Supreme Court Consideration in Circuit Split over Litigant Consent to Article III Adjudication Mandated by *Stern v. Marshall*

Stephen D. Lerner



▲ Stephen D. Lerner
On June 24, 2013, the U.S. Supreme Court granted *certiorari* to consider an appeal of the decision of the Ninth Circuit Court of Appeals in *Executive Benefits Insurance Agency v. Peter H. Arkinson, Trustee, solely in his capacity as Chapter 7 Trustee of the Estate of Bellingham Insurance Agency, Inc.* ("Bellingham"). In *Bellingham*, interpreting *Stern v. Marshall*, the Ninth Circuit held that, notwithstanding a constitutional limitation against entry of a final judgment by a bankruptcy judge in a fraudulent conveyance action against a non-creditor, a defendant may nonetheless consent to entry of a final judgment by a bankruptcy judge. The defendant, Executive Benefits Insurance Agency, was found to have consented by waiving its "personal right" to Article III adjudication. This implied consent resulted from the failure of EBIA to raise the necessary constitutional objection before the Ninth Circuit. The *Bellingham* decision is in direct conflict with the 2012 decision of the Sixth Circuit Court of Appeals in *Waldman v. Stone*, which held that a defendant cannot waive the constitutional right to Article III adjudication.

The Board of Directors of the College determined to file an amicus brief supporting the *Bellingham* Respondent's position that consent to bankruptcy court adjudication of fraudulent transfer claims is consistent with well-established Supreme Court jurisprudence and supported by significant practical considerations. The decision was made after thorough consideration by the Board and represents the first time the College has participated in any litigation. Given the adverse ramifications to the bankruptcy system that likely would occur if the Supreme Court reverses, the College decided this was a matter that called for participation as an amicus. The importance of this issue is highlighted at the outset of the College brief:


The College is convinced that Petitioner's proposed ruling, notwithstanding Petitioner's efforts to minimize its impact, would fundamentally threat-

en the orderly administration of our bankruptcy system. Proceedings will become mired waiting on action by district courts (already strained by increased dockets, decreased funding, and delays on judicial confirmations), while bankruptcy judges will be unable to effectively push cases forward.

Many business bankruptcy cases involve operating businesses with hundreds, if not thousands, of employees, vendors, landlords, service providers and other creditors and parties. Delay in bankruptcy exacerbates losses and threatens the employment and livelihoods of substantial numbers of people and their families. Bankruptcy estates are necessarily limited and the additional burden on such estates that would come to pass if Petitioner's position is upheld would be devastating.

The College brief was prepared by a working group consisting of College Fellow Professor Ralph Brubaker of the University of Illinois College of Law (who is a pre-eminent *Stern* scholar), Squire Sanders and Latham & Watkins. The working group coordinated closely with Professor John Pottow of the University of Michigan Law School, counsel of record for the Respondent. As a complement to Respondent's brief, the College brief focuses primarily on the history of Supreme Court jurisprudence concerning Article III adjudication of summary and plenary matters in bankruptcy, well-recognized and time honored principles of litigant consent to non-Article III adjudication of otherwise constitutionally mandated Article III matters and the practical implications on the bankruptcy system and other non-Article III tribunals (such as the BAP and U.S. Magistrates) if litigant consent is not upheld.

Prior to submission to the Supreme Court, the College brief was reviewed and approved by a subcommittee of the Board consisting of Susan Freeman, William Perlstein, Paul Singer and Patrick Vance. The working group acknowledges and appreciates the significant input received from the subcommittee and other members of the Board. The brief can be found on our website at www.amercol.org.

Oral argument is scheduled for January 14, 2014. 

President's Column

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such giants as Vern Countryman of Harvard Law School and Lawrence P. King of New York University School of Law. The current issue contains an excellent interview with the late Barney Shapiro.

Participation. The Foundation achieved a new level of participation by Fellows during 2012. Approximately 57% of the College's Fellows contributed to the Foundation in 2012, up from 51% in 2011 and 28% in 2010. The number of donations went from 254 in 2010 to 572 in 2012. These numbers confirm the increased participation by Fellows in the College's pro bono and educational programs. Donations to the Foundation typically come from individual Fellows - lawyers, accountants, financial advisers, judges, government employees and academics.

Approximately 110 professional firms have also given to the College's Patron and Sponsor program in each of the past 2 years. This program provides at least one half of the College's annual budget. Because of a strong commitment by Fellows, the amounts contributed have risen almost 50% in the past 2 years alone.

The College's Board just approved important by-law amendments intended to implement greater participation by all Fellows. Among other things, the by-laws now impose term limits on all leadership positions.

Impact Advocacy. The College's Board also approved the filing of an amicus brief in the *Bellingham* case that will be argued in the Supreme Court during the next year. The brief will support the Ninth Circuit's holding that bankruptcy courts may exercise jurisdiction on the basis of a litigant's consent.

The College is not merely in good financial shape. Its strong public service and educational record have distinguished it from other insolvency groups. We can all be proud of your accomplishment. 



Board Actions at March 15, 2013 Meeting

The College Board of Directors voted unanimously to provide Fellows with a brief synopsis of the bi-annual board meetings held in March and October of each year. This is YOUR Association and we want to ensure that all Fellows are fully aware of the incredible volunteers and programs that are operating at full speed. If you are not already plugged in and would like to be involved on a committee or project, please contact our Executive Director, Shari Bedker, at sbedker@amercol.org, 703-934-6154.

New Directors: Williamson (5th Cir.); Buckley (7th Cir.); and McCarthy (Int'l).

2012 Financial Results: Slight surplus because of Committee underspending; modest surplus projected for 2013; surplus used to fund additional unbudgeted pro bono requests; clean audit opinion received.

Patrons & Sponsors: Six officers and five directors raised 46% more in donations than in prior year.

Pro Bono: 29 organizations in 20 states plus DC received \$221,500 in grants; grants help fund bankruptcy clinics, training, software purchases aimed at providing bankruptcy-related legal services to indigent consumer debtors.

Foundation: Fundraising arm of pro bono committee; 51% participation by Fellows in Foundation gifts during 2011; 57% in 2012; private funding increasingly necessary because government funding drying up.

Nominating Committee: Replacements for Board of Directors and Regents due to term limits; approved nominating committee's recommendation for new officers and directors.

Induction Ceremony: 525 attendees in 2013; exceeded 375 attendees in 2012.

Dues and Fees Structure: Approved reduced dues and event fee structure for judges, academics, government employees, members of small professional firms, subject to implementation by Executive Committee on ad hoc basis.

Judicial Outreach: College provided additional stipends for Judges to attend annual regional meetings.

Archive Committee: Oral histories continue; digitization of important bankruptcy related papers; available to public.

Educational Programs: Every Circuit will conduct an educational program in 2013.

Meetings and Events: Circuits also planning social events to coincide with educational programs.

Policy Committee: Considering a possible New Chapter 14 for Code, proposed by Hoover Commission; review of proposed amendments to Uniform Fraudulent Transfer Act; possible consideration of appropriate impact bankruptcy litigation.

Visibility Project: Publicizing pro bono grants; new inductees; archives; program educational materials; possible webinars.

Board of Regents: Average age of new fellows is 55; younger candidates to be sought; will also seek more female candidates and financial advisors; Judicial Nominating Committee reconstituted to attract greater participation by Fellows.

International Nominations Committee: Considering new guidelines for international candidates because of public service activities requirements.

Liaison Committee: Possible linking of College with ABI Chapter 11 Commission;

possible recognition of College as non-governmental participant in UNCITRAL.

Distinguished Law Students: Selected from First, Second, Fourth, Ninth and Eleventh Circuits.

Supreme Court Book: New book on time and on budget; will supersede first edition; book probably available to Fellows at discount.

Circuit Review Report: will include consumer materials; project to be completed by the Summer of 2013.

International Committee: Presentations during 2012 in San Diego and in Atlanta during 2013; joint dinner planned with International Insolvency Institute in New York during June.

Executive Director's Report: To save costs of printing and mailing, all future board materials will be sent out electronically prior to meetings; review and possible update of by-laws; turnover of committee members to be implemented by chairs. ☰

Chair's Column

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lieve that the College is largest supporter of pro bono bankruptcy programs in the United States. The remainder of the budget pays for College events, educational programs, support of the archives project, publishing the Circuit Surveys and Supreme Court book, general administrative expenses, and the like. Because of the wonderful institutional support of our Sustaining Patrons, Patrons, and Sponsors, together with the donations of Fellows to the College Foundation, the College accomplishes a great deal, despite a relatively modest budget.

Other news of interest from this issue includes a report on the filing by the College, for the first time in its history, of an amicus brief with the United States Supreme Court. As indicated in Stephen Lerner's article in this issue, because of the importance of the matter to efficient bankruptcy administration, the College decided to file an amicus brief in *Executive Benefits Insurance Agency v. Peter H. Arkison, Trustee, solely in his capacity as Chapter 7 Trustee of the Estate of Bellingham Insurance Agency, Inc.*, supporting the result reached by the Ninth Circuit Court of Appeals. The filing was a first for the College, but the Board of Directors unanimously concluded that it was important to do so. The College forwarded a link to the brief to all Fellows shortly after it was

filed, and I commend the brief to all Fellows. The discussions about whether to file the amicus brief, by the way, led the Board to formulate a written policy with respect to the circumstances under which the College would consider either filing an amicus brief or taking a policy position as an advocate. A copy of the policy is included in this issue of College Columns.

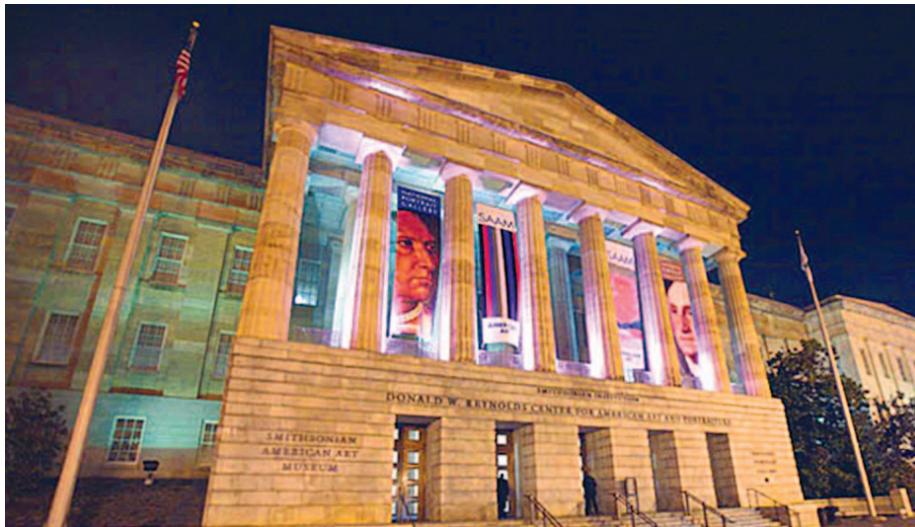
For the College, as with many other organizations, it is always a challenge to balance continuity and institutional memory with a desire to maximize the opportunity for full participation by those Fellows who wish to do so. The Board has thought about this issue for the past year or so, and, at its October, 2013 meeting, changed the by-laws to add term limits for all leadership positions in the College. We have a wealth of talent and experience in our Fellows, many of whom seek to participate very actively in the College, and everyone on the Board wanted to institutionalize a regular rotation of those involved in the different activities of the College.

One final note. Our meeting in March, 2014 will mark the 25th anniversary of the College. Thanks to efforts of innumerable Fellows during that period, we have accomplished a great deal. The next 25 years for the College should be even more exciting and productive than the first 25 have been.

Best wishes of the season to all Fellows and their families. ☰

Join Us in Welcoming the 25th Class of Fellows!

G. Christopher Meyer, Chair, Board of Regents



▲ G. Christopher Meyer On October 30, 2013, the Board of Regents met in Atlanta during the NCBJ to select the members of our 25th Class of Fellows. We have chosen a group comprised of three judges, two academics, one financial professional, two international practitioners and 25 attorneys.

We sincerely appreciate the substantial time and effort the nominators put into each nomination. As always, the selection process was a difficult one. The Board of Regents and I think you will be pleased with our 25th Class. They have a wide range of practice experience, in terms of geography and client size, as well as debtor and creditor work and business and individual cases. They also have an impressive record of contributions to the practice and to the community at large, through speaking, writing, and community service of many varieties.

Each of those selected has received their letter of invitation. We have heard many reports of how honored and excited they are by their selection. Several members of Class 25 have already elected to make contributions to the College Foundation.

Hopefully, you have all been advised by your respective Regents of the nominees selected from your Circuit. I encourage you to reach out to each person selected and congratulate them on their achieve-

ment. I hope you will also urge them to become active members of the College, on both the Circuit and National levels. We owe it to ourselves and to them to help them connect with and contribute to the College.

On March 14, 2014, we will hold the Induction Ceremony for Class 25. The ceremony will again take place in the covered atrium of the Smithsonian Donald W. Reynolds Center for American Art and Portraiture. We received a variety of positive responses to the new venue following the 2013 induction. If you were not able to attend last year, I hope you will plan to come in 2014. I think you will appreciate the improved acoustics and the increased space to accommodate our entire group, together with spouses, significant others or family members. While it is a shame that we could no longer fit in the unique Supreme Court venue, I think the new location and its improved logistics have made for a better overall experience.

I want to close by adding my voice to that of other College leaders and asking that you make a 2013 contribution to the College Foundation. We each have much to be thankful for and are blessed with the capacity to assist those less fortunate. The Foundation is an excellent choice as part of your philanthropy. It plays a vital role as America's largest supporter of bankruptcy related pro bono activities. Please join me in adding the Foundation to the list of charitable organizations that you remember at this time of the year.

I wish you a joyous holiday season and I look forward to greeting you all in March and welcoming our 25th Class of Fellows to the College. 🙏

Foundation

Stop, Look and Listen We Need Your Support!

R. Patrick Vance,
ACB Foundation Chair

If your mailbox is like mine, you are inundated with year-end donation solicitations for everything from the Society to Preserve Cajun Cooking to your local public television station. Worthy causes all. It is hard to give to all of these worthy organizations unless you are a recent lottery winner. So you have to make choices.

One of those year-end solicitations that you received was from me as chair of the American College of Bankruptcy Foundation. So... STOP... don't throw my letter into your round filing cabinet. Let me tell you again why the Foundation's work is the type of work you want to support.

The College/Foundation's pro bono committee has done a terrific job under its chair, Larry Coppel, in identifying organizations serving the indigent population's civil legal needs. This year the committee has selected 36 pro bono grantees from 19 states who are being awarded over \$320,000 in grants. We wish we could award more since the need is great, but we are constrained by the College's size and the limits of your generosity. And, you have proved in recent years just how generous you are.

Most of our grantees are legal services corporations who receive the bulk of their operating budgets from the national Legal Services Corporation. These programs promote equal access to justice. The decline of interest rates on lawyers' trust accounts (IOLTA) and the budget sequestration has been a double whammy on legal service corporations' budgets throughout the country.

I have seen the devastating impact first hand. I am serving a term as the chairman of the board of the Southeast Louisiana Legal Services Corporation which provides civil legal services to the low income population in 23 parishes in my home state. The struggle to fund our expenses annually is debilitating, but not unique. We, as lawyers and bankruptcy professionals, know better than the population at large that equal access to justice is an important right that we should cherish and protect.

So, I ask you, as you sort through all the year-end solicitations... find the one that you received from me... write a check... and be as generous as you are able. And, enjoy the holidays and pat yourself on the back because you have done a good deed. 🙏

The International Scene

Bruce Leonard
International Insolvency Committee



▲ E. Bruce Leonard

The College has recently embarked on a number of international initiatives through the International Committee.

First and foremost, the College presented the third in its series of international insolvency panels at the Annual Meeting of the National Conference of Bankruptcy Judges in Atlanta. The panel discussion was moderated by Hon. James M. Peck and featured Fellows Marc Abrams (New York), Andrew Leblanc (Washington) and Bruce Leonard (Toronto). Despite being placed rather late in the Conference program, the panel presentation drew a very good audience. The College extends its appreciation to College Fellow Hon. Ray Mullins, the President of the National Conference of Bankruptcy Judges and to Fellow Hon. Dennis Dow the Conference's Program Co-ordinator for their assistance in making the presentation so successful.

Resource materials for the panel presentation are now posted in the International Resources Section of the College website.

They include a listing of all Chapter 15 cases that we have been able to identify, a bibliography of articles and comments on practice and procedure under Chapter 15 and a bibliography of materials on the UNCITRAL *Model Law on Cross-Border Insolvency* (on which Chapter 15 is based). Anyone who becomes aware of cases that are not on the case listing or comments and articles that are not on the bibliographies is highly encouraged to send the particulars to Bruce Leonard so that we can keep the lists updated. We appreciate everyone's help with this important international endeavour.

The College's International Committee is continuing its study of the feasibility of seeking accreditation from the United Nations Commission on International Trade Law (UNCITRAL) so that the College could take part in the meetings and deliberations of UNCITRAL's Insolvency Law Working Group. This Working Group created the *Model Law on Cross-Border Insolvency* and meets twice a year, alternating between New York and Vienna. UNCITRAL has several other Working Groups including Working Groups on Security Interests and on Arbitration and Conciliation and has recently established a further Working Group on Small, Micro and Medium-sized Enterprises. If there is sufficient interest among the Fellows and International Fellows of

the College, we would propose to explore the feasibility of being able to participate in the work of those Working Groups as well. For those Fellows who would be interested in participating in UNCITRAL's world-leading international work, please pass along your interest to our Executive Director, Shari Bedker.

Everyone will recall that the College, along with the International Insolvency Institute ("III"), published a leading work on international insolvency in 2009. The book, entitled "International Cooperation in Bankruptcy and Insolvency Matters," was authored by Hon. (now Prof.) Bruce A. Markell and Professor Bob Wessels of Leiden University in the Netherlands with assistance from Jason Kilbourn of the University of Chicago. The publishers have recently expressed interest in publishing a Second Edition of the book and the College and the III have agreed to support doing so. The publication of the Second Edition of the book is expected in 2014.

The International Circuit of the College hosted the third in its series of international dinners in June in New York in conjunction with the Annual Conference of the International Insolvency Institute. The Dinner was held in the wonderful ambiance of New York's Century Association courtesy of arrangements made by Club Member and New York Fellow Bob Rosenberg. The Dinner was attended by approximately 100 Fellows and Members of the III representing 18 different countries around the world. The Dinner featured two Judicial presentations, one by Hon. Eberhard Nietzer of Germany on Court-to-Court Communications in Germany and changes to Germany's insolvency system, and by another Mr. Justice David Richards of London. Justice Richards gave the audience an entertaining account of how a Court-to-Court communication between England and the United States developed during the *Lehman* case. He explained that the Court-to-Court communication (only the second of its kind between England and the U.S.) was made considerably easier because he and Hon. James M. Peck, the presiding Judge of the *Lehman* proceedings, were both Fellows of the College and had become well acquainted with each other.

For those Fellows who are not on the roster of Members for the International Committee and would like to become involved or to be kept abreast of international developments, please drop a note to Shari Bedker to indicate your interest in becoming a member of the Committee. We appreciate everyone's interest in the international aspects of the College's activities. ☰

Fellow News

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

Albert A. "Al" Koch, vice chairman at AlixPartners and managing director in the firm's Turnaround & Restructuring Services group, was inducted into the Turnaround Management Association (TMA) Hall of Fame, a prestigious honor in the field of corporate renewal on October 4, 2013.

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

Michael A. McConnell, has been selected to receive the prestigious A. Sherman Christensen Award by the American Inns of Court. The award will be presented at the annual American Inns of Court Celebration of Excellence at the Supreme Court of the United States on October 19, 2013; the event will be host-

ed by Associate Justice Elena Kagan. McConnell is a partner at Kelly Hart & Hallman LLP and serves as chairman of the firm's Business Reorganization and Bankruptcy practice group.

M. Freddie Reiss, Senior Managing Director in FTI's Corporate Finance/Restructuring segment, was inducted into the Turnaround Management Association's (TMA) Turnaround, Restructuring, and Distressed Investing Industry Hall of Fame during the 25th TMA Annual Conference held in Washington D.C. on October 3-5, 2013.

Professor G. Ray Warner, of counsel with international law firm *Greenberg Traurig LLP*, was presented with the *National Conference of Bankruptcy Judges'* (NCBJ) 2013 Excellence in Education Award in October 2013. ☰

Barney Shapiro: West Coast Scholar and Mentor

Adam L. Rosen



▲ Bernard Shapiro

Bernard Shapiro was born in 1917 and started practicing bankruptcy law in 1946. He practiced over five decades, through the enactment of the Bankruptcy Code, and two bankruptcy review commissions. Throughout it all he lectured, he wrote, he mentored, and he cared about practicing law the right way.

Barney rose to the top of our profession; he had prominent roles in chapter 10 and 11 cases in the 1950's, 1960's and 1970's. He was the Chair of the National Bankruptcy Conference, and he taught at UC Berkley law school. In 2001, the College awarded Barney its Distinguished Service Award.

Barney passed away on April 16, 2011, but his legacy and influence remain. In the June 2011 College Newsletter, we recounted some of the phrases that made Barney so memorable. Here are a few:

You're pushing on a swinging door.

People can change but they seldom do.

Just like peach ice cream, it always sounds better than it tastes.

Just because something is number one on your priority list doesn't make it number one or even 101 on mine.

Once you step in it, you can never get it completely off your shoe.

If you want to get something done, give it to someone busy.

I know this hurts but some day you will thank me for it.

I'm just a country bankruptcy lawyer.

The following are excerpts from a taped interview with Barney on October 30, 1994, when he was 77 years old. Barney describes how World War II prevented him from completing law school, how he never took the bar exam, and how bankruptcy practice has evolved over five decades.

Bob Moore remembers Barney as the consummate mentor of young lawyers,

showing a sincere interest in their professional and personal development.

Ron Trost remembers Barney as a great lawyer, scholar, and dealmaker. According to Ron, Barney was a student of the law from the time he clerked for California Chief Justice Traynor to his time as senior partner of Gendel Raskoff Shapiro & Quittner.

Ron said, "To Barney, the legal game was not important. The principles were important- he always wanted to do the right thing." "Barney would sit back and listen a lot, but when he spoke everyone listened to him."

Part 1 of the Interview of Barney Shapiro

by Randall Newsome on October 30, 1994 in Los Angeles, California. Summarized from the National Bankruptcy Archives.

Family Background

I was born in Brooklyn, New York, on October 11, 1917. I grew up in L.A.

I moved to L.A. when I was about three. My mother had predeceased. My father came out here, married another woman and I grew up with them until the age of 11 or 12 when my father died. Then I went to live with my sister and brother-in-law. My guess is that the stepmother didn't really want me. She would have been in a position of taking in an 11 year old and a 16 year old. The 16 year old, my brother, was always a rascal, a bit of a problem. Following him in high school was something else again. Teachers remembered him. He didn't know what he wanted to do and he really didn't want to go to school. He turned out to be a very stable guy, an interesting guy, bought a truck and hauled potatoes and onions over the ridge route between here and Bakersfield and then on up the San Joaquin Valley. He made a good living at it.

And my stepmother had two boys, one of whom was named Milton, a beautiful red-headed boy who died in a swimming accident while we were all living together. I don't think she wanted to undertake our care and she wanted to get as much of our inheritance [from my father's estate] as she could, and she did. I call her my wicked stepmother.

So, I went to live with my sister and brother-in-law. They were newly married. That was a fantastic thing for a couple to do, and it made an enormous change in

my life. I was very shy and would not go into a room full of people, embarrassed me to death, and they brought me out of all that. They were very loving, they really cared. And second of all when I went to high school, they insisted that I take a public speaking course. The public speaking teacher was also the debate coach. He wanted me immediately to go into debating which I did, and that was an interesting change in my life and carried me all through college.

Q: When your father died it was around 1928 or 1929, and the Depression was really in its full blown stages, right?

Yes, my brother in law and one of his brothers, and his father owned a bakery that baked Russian rye bread, Jewish bakery products, but primarily bread. They owned it and, at that time, it was on Central Avenue. [L.A.] was a very decent place to live. I could walk from my house at 60th and Vermont to Exposition Park where there was a natural history museum, and a big park. I could take a street car one block from my house and go all the way downtown to a movie, and if I had some extra money, a lunch downtown with a friend. [Or] go to the Paramount Theatre on 6th or 5th and Broadway on Saturday afternoon.

I had friend, who like me, would like to hike in the mountains, and we would pack ourselves up and take a [street car] downtown at 2 in the morning and pick up [another train] at the subway terminal and go clear to the end of the line to the foot of the Sierra Madre Mountains and hike up Mount Wilson and spend 3 or 4 days in the mountains. And now I realize that my sister must have been scared to death. I was very young, just a few boys going, but with never a thought that there was any danger. It was a comfortable neighborhood kind of place. The old description of Philadelphia as so many villages in search of a city, that was L.A.

[L.A. started to change] when I was away at college, because when I came back for good on Labor Day of 1948 there was a totally different city. Still not drive-by shootings, nothing like that.

High School and College Education

Jefferson High School, which was right near [where I lived], it was pretty much an African American high school. Other schools completely south of that, maybe in the 70s or 80s, were also trending toward Black. Roosevelt High School near Boyle Heights was a high school that was then made up of children of Jewish parents.

I went to Manual Arts [High School, but I did not live] in that district so I lied about my residence. I gave a friend's residence and went to Manual Arts. Why I wanted to go to Manual Arts I cannot tell you, maybe because some of my friends went there.

[Vocational training] wasn't what the school was all about. It did have a very good print shop and an auto shop so it had some good vocational training, but from the moment I started there until I graduated I was on what was known as a college curriculum course.

I read everything I could get my hands on. When I was a kid you could go to a lending library. We had lending libraries, and I think for 3 cents a day you could rent a book and you could rent 2 of them for a nickel, maybe it was a dime. I would lie on my front porch and just read those books through and return them the same day. And it would be "Tarzan of the Apes," "Tarzan and the Moon Man", but I distinctly remember reading Somerset Maugham's "Of Human Bondage" while in junior high school, really just as I started junior high school, so I must have read other things as well.

I had a friend who was in the Glee Club and he had me try out. I want to tell you I can barely sing a note but I was in the Glee Club, and this business about the public speaking, I mean I just rocketed up. There was a contest at USC sponsored by the Herald Express, an extemporaneous speaking contest, and they enrolled me in that. I was the representative of my school. I was made the defense counsel of the boy's court at Manual Arts so by the time I graduated, although I didn't know it and didn't feel it, I was well known. I was doing O.K.

The students, my class, knew me, and I was a successful debater. It was the kind of debating that you see where you have a national issue, that kind of thing. I didn't do well at that contest at USC, Sherman Mellinkoff from Beverly Hills High, who later became the Dean of the Medical School at UCLA, won it. We met again when I was a senior [at UC Berkeley] at the Joffre Medal Debate between Cal and Stanford. First time we'd seen each other from high school to that time. I won the Joffre Medal. He didn't that year. I don't remember what I said, it was an extemporaneous kind of thing. You were given a subject and you were given about an hour to prepare at this USC thing. He said, "Gee, what happened to you? You sounded like you belonged to the American Legion when we did that thing in

high school. Here you sound like you're a member of Leon Blum's Popular Front. I don't understand what happened to you in the meanwhile." I said "A lot happened to me in the meanwhile."

Well, I had gone to Berkeley, and I lived in a boarding house that my cousin had recommended where there were four medical students and myself. They probably had a dormitory but it was beyond my means. And I would get a little money from the trust [from my father's estate] which of course was dwindling down to nothing, like \$10 or \$20 a month, and my sister would send me some money and I would work for money. The first thing I remember was going onto that campus and sitting in Faculty Glade and realizing I didn't know anybody, not anybody, not a soul. But I loved it from the minute I got there. I loved it.

I took general courses and I saw a sign on a bulletin board about freshmen debating and I signed up for it. And that made my life entirely different at Berkeley. It was a very interesting group and that shaped the courses I took and my education because it turned out that [a] relatively young man was the debate coach and he was, I suppose, a Marxist.

And the debate group even among the freshmen was a largely academic, philosophical, economic, political science type of group, and we associated totally with the varsity debaters who were ahead of us. He drew no distinction. And he managed to obtain for all debaters a card that would allow us to go into the stacks of the library so we would not have to ask anybody at any desk for any book. We could go sit cross legged in the stacks and read all day in the stacks of the library. Fantastic thing.

[I studied] the history of philosophy and then kept going into it and wound up with logic and specialized courses in Berkeley, Hume, Plato, but my interests were extremely broad by the time I was through. The debate coach and the director at the little theater thought that little theater people were entirely too insular in the theater, didn't know anything about economics. He wanted them to associate with debaters. We had a meshing, Gregory Peck, then Eldred Peck, was in little theater. Barry Nielsen later became Barry Nelson and had a very successful stage career in little theater.

Q: Did you know Gregory Peck?

I did not know him. My wife Bellevernon Peck was a cousin. So we knew each other and we knew his later wife, but

we never really associated. But, Pauline Kael was a debater and was a year behind me and we were very good friends. [Berkeley] was basically a left wing kind of place.

Q: So you graduated with a philosophy degree. What made you decide to go to law school?

Well, it was still the Depression and I didn't have anywhere to go. We're really in 1939 now. And my best, closest friend, who still is my closest friend, decided he was going to law school and he said let's go to law school. I said I don't think I have the grades to go to law school. I never paid any attention to grades. I probably had better than a B average. But that was only because since he said let's go to law school and my last semester I took 19 units that I had to get all A's in order to qualify, and I got a B in one of those and so I had to take this test and I got in that way. And he had to do the same. He wound up first in his [law school] class; I wound up fourth in the class. [He was] Roger Wollenberg, who is now of counsel to Wilmer, Cutler, and Pickering in Lloyd Cutler's law firm.

Law School at UC Berkeley

[I went to] UC Berkeley Law School, Boalt Hall. Ours was an interesting class. It was a class that went to war. [Some of my friends were Roger] Wollenberg, Dick Hayden who was later a Superior Court judge here, my later partner, Miles Raskoff and his roommate Bob Shutan. We had a hell of a class. [I was on law review and] was fourth in my class.

I got married at the end of my second year because the war was coming and that was 1941 and Raskoff got married, Hayden got married, my friend Eddie Rubin got married, and we didn't know how long we would get into our third year.

[I signed up for the Navy] in the second semester of the third year [of law school]. [I didn't finish law school, but] they let us have a degree based on the fact that we had finished enough of the second semester of the third year and they just prorated our grades.

Military Experience

I went into the Navy and got an Ensign's commission, but Berkeley was left wing politically, I was part of that and there were a couple of guys in Naval Intelligence who were ahead of me in college who believed that I was, if not a member of the Communist Party, a fellow traveler. I participated in peace rallies; I spoke

outside Sather Gate with representatives of the Longshoremen's Union. I was head of the Peace Committee. And I found out later one of my classmates was in the office of the Commandant of the Naval District and he looked up the record and [he wrote up a report stating that I was a radical, and after 6 months] they gave me an honorable discharge. They gave [the report] to somebody, and then some Naval Officer called me to his desk and said "Here is this thing," and the paper said I was honorably discharged. I could go to Washington and protest it, but it was impossible. I wouldn't have the money to go to Washington.

I was pissed. But you can't fight that machine. So as a result of that, now I was married, living in a cottage in Berkeley, at 2433-B Warring Street, and so I got a job in the shipyard in the legal department. And it was kind of interesting, and they offered to try to get me [a military] exemption because I was in a defense industry and that was pretty important stuff. Those were the victory ships, turning them out one a month. I told them I didn't really want [an exemption].

[So, I go to] a draft board. I got a number there. Eventually the number came up and they said I think we can get you [an exemption]. And I said no, I didn't really want to do that. [The war] was serious stuff, and I'd go. And so I went and I went down to the Presidio at Monterey where a couple of my buddies from college and law school were there. One was Burt Janes who later became a Court of Appeals judge up in Sacramento, and another was a guy named Dick Detering who I was with in debating. And they said if you do well on this test in the Army you will go in the Air Corps and so I said fine. I did fine on that test, but word came down that the next 400 people are going to Camp Roberts, California in the Infantry and there would be no exceptions. They wanted a cross section of the world. They were tired of getting the junk in the Infantry. I went to Camp Roberts, lost 30 pounds, wound up in officer candidate school, and became a lieutenant and went to war.

[It was 1943 and I went to] officer candidate training school in Fort Benning, Georgia. And so I wound up in Camp Shelby in Mississippi for further training and then a short stint at Camp Walters [in Texas]. Terrible place. I could have killed a crocodile with my bare hands when I got out of Camp Roberts, let alone OCS. And wound up in Puerto Rico in jungle training, and then in Trinidad in

jungle training, and we were supposed to replace Wingate's Raiders in China, Burma, India and fortunately the war ended before that could happen because our troops were not ready for that kind of action. And then I spent 6 months in Dutch Guiana waiting to go home. [This was] 1945 and '46. [I never did actually go to war.] Never fired a shot in anger, or otherwise, at an enemy. Thank Heavens because the number of Wingate's Raiders who came back were few and far between.

The Bar Exam

I was studying for the Bar in Dutch Guiana. I had numerous duties including intelligence officer of the armed forces of Suranam and French Guiana. We got a bunch of silly reports from South America about what the Communists were doing there. And eventually I wanted to take the Bar at my station. [But the State Bar wouldn't let us take the special servicemen's Bar in Guiana.]. They said you can't take the special servicemen's Bar at your station, there is only the regular Bar you take at your camp. The special servicemen's Bar you have to take here in San Francisco. I wrote back and said you must be making some mistake if it's special...You can imagine the correspondence that went on. I kept getting the same answer. I appealed to the Board of Bar Governors.

Meanwhile my friend Bernie Witkin had been sending me review material because he did the Bar review courses. He was a clerk to a Supreme Court Justice [and he] advised the Chief [Justice] and went over the Chief's opinions and handled releases for the Chief and he acted as reporter of decisions in the State of California.

I was ready to take the Bar and I was furious. I couldn't understand, this was incredible to me, that you couldn't take it at the same place as you take the regular Bar at your camp. The same Colonel would supervise your taking it, it was crazy. Some of my friends in law school went before the Legislative Committee and said let's have more Bar exams so these guys returning, and who are out there in the boonies, can take and become members of the Bar. They've waited four years. The State Bar was intractable. The Legislature, which has always hated the State Bar, passed a law that if you finished an accredited law school, and there were only Berkeley, USC, Stanford and Hastings, those were the only four accredited law schools in the State of

California, and had been prevented from taking the Bar, you could be admitted on motion. Nobody had asked for that. And the Legislature did it because they hated the State Bar. So I came back and Bernie Witkin told me that I had a job waiting for me as clerk to Roger Traynor on the [California] Supreme Court. And that Wollenberg had a job with Justice Douglas in Washington. Fantastic!

California Supreme Court Clerkship

[In 1946 I started] my work with [Justice] Traynor. Great experience. He was a great man. He was a friend who remained a friend until the end of his life and treated us as equals in every way. He popped in one day and said Barney, what are you working on. I said I am working on the miscegenation opinion. Oh, he said and went out. I trotted down the hall and went into his Chambers and I said, well, Judge, why did you ask? Well, he said there is a conference memo. I said I will do the conference memo. Oh no he said, that's no problem. And he was sitting there typing it. That's the kind of guy he was.

Q: You taught at U.C. Hastings law school between '46 and '48, right?

Yes, one of the greatest professors I had was Professor McGovney, he was my constitutional law professor. And he went over to Hastings to teach which was not unusual for retired professors. Before the course started he fell down on the street of a heart attack and died. And Hastings asked Traynor to recommend somebody to take the course. Traynor asked, told me I should teach that course. So I did [while I was a law clerk].

Law Practice in California

I wanted to learn about tax. When I went to law school, tax was not a real subject. And there was a guy in San Francisco who practiced nothing but tax, pure tax, Samuel Taylor. Fantastic guy. And I went to work for him and I worked for him for 6 months.

On a cable car on California Street coming back from lunch one day he said "Barney make up your mind. You're either going to stay with me and be a tax lawyer or you've got to go on your way." I had indicated I wasn't at all enchanted with tax. And so I left him.

Some time before that Martin Gendel who was the Martin Gendel of Gendel & Chichester had been up in the 9th Circuit arguing a case and wanted to meet me

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because he knew my sister and he knew [of my] record, law review. He was from Boalt Hall. He was ten years older and he did bankruptcy work and he wanted me to come with him. I said no, I didn't want to leave the Bay Area. And Belle and I had bought a lot up on the hills above Richmond, above Albany.

But I was scared of how I would get a job up there. I still had the Depression mentality. I didn't know [if] there were jobs and I looked around and I wasn't all that successful [at finding a job]. San Francisco was pretty much a closed shop and it wasn't all that good with somebody with a Jewish name even then, and Belle was getting tired of the Bay Area. Lo and behold, almost impulsively, but it wasn't really impulsively, we decided to go to LA. [I went to work for Martin Gendel who] had a bankruptcy practice.

Q: Whatever made you decide you wanted to go to work for some bankruptcy firm anyway?

I think it was a job, [and I worried] about not being able to find a job. Bob Shutan and Miles Raskoff both my classmates recommended it. [The name of the firm was] Gendel and Chichester. And Miles Raskoff my former classmate was working with them, and he wasn't a partner then, he just started. Because when Gendel first asked me I called Bob Shutan in L.A. And he was with Quittner, Stutman, & Shutan, in bankruptcy. He said it's a fantastic field. It's as interesting as hell.

Martin Gendel was a well respected lawyer. He was easy to get along with as far as I was concerned. I think he looked on me as a son, but he looked at a firm as though he were the coach, and he had his own ideas and it was very hard to change them as far as the firm was concerned. On compensation, on becoming a partner, on legal concepts, the guy was as open as anyone could be. In terms of his standards or his rigidity, if he got down on someone he would say things about them that weren't collegial. He had the faults that anyone would have, but he was a marvelous lawyer. And he was extremely good to me and to Miles. We were equals from day one. Any time he had written anything and we thought it ought to be changed he was totally open to it. Remarkable quality, just a remarkable quality.

Francis [Quittner] was idiosyncratic. He had his hearing aid and I don't know

that Francis was a great scholar, but he was a very, very effective lawyer and he was forward thinking. He saw what chapter 11 could do and he became a member of the National Bankruptcy Conference. I don't know when, but he associated with the guys in the East who were doing chapter 11 and he and Stutman really pioneered chapter 11's in the West. And for that they deserve credit. Martin didn't really see that. [When Francis] was arguing a point to a judge if he didn't have anything else on his side he would say that the National Bankruptcy Conference only last year had passed a resolution in favor of what he was saying. You can imagine how that impressed the judges. [Laughter] And any time any court in the 9th Circuit did anything that was, as far as he was concerned, out of line, he would want the National Bankruptcy Conference to draft a statute and take it to the Congress. And the other people would say look, first of all, Francis, let's see how it plays out with other courts. You don't go crazy just because some court has said something, and secondly, all kinds of nutty things come out of the 9th Circuit. [Laughter] So don't get carried away.

Q: What about Jack Stutman?

Someone once said that every law firm needs a performer, and Jack was a performer. Jack also wasn't a scholar, certainly was not a scholar in the sense of George Treister or Herman Glatt, but he had a way of putting a crowd at its ease, a group of creditors or a court, he was a strong advocate. He had a lot of jokes. And even in meetings of creditors where they all had heard the joke before they would say "Jack, don't tell us that one anymore. We've heard it. Let's get down to business." They still had complete confidence and trust in Jack.

One of my favorite stories about Jack. Jack would come to a group of creditors and make a proposal, and they would say Jack the train has left the station, you said the last time we met that was the last offer. He said that was my last offer. Now I want to give you my next offer. [Laughter] And it would disarm them. So he was a very important, a very engaging guy.

Q: Why did Bob Shutan leave?

I don't know, Bob Shutan has always been active in things like ACLU or Lawyers Guild. He went to Mississippi during the summer, the great civil rights summer [in the 1960's], and I think that he felt the firm, or Francis Quittner and

Jack Stutman, were not very agreeable to his civil rights activities. I think maybe he didn't feel at home in that regard. You would have to ask Bob, but I'll bet that was a part of it.

Q: Who were the other major figures in the bankruptcy bar?

Also Jerry Nemer of Buchalter & Nemer, Fields & Savitch, Irwin Buchalter, a good solid practitioner. Jerry Nemer, well, again not a scholar, but a very effective bankruptcy lawyer. When I say not a scholar, it doesn't mean these guys didn't know the bankruptcy law. They were comfortable with it, and it was a Bar where we knew each other and we knew who we could trust.

Also, Curtis Danning was an important, effective trustee. His sister Sarah B. Danning, later Sarah B. Danning Gross, still alive and still active and predates all of us.

She was a trustee. She was the only woman in the field then.

There was [also] Irving Sulmeyer [and] he became very prominent in the field. There was a trustee named George Gardner, a small man with a mustache who acted as a trustee and typed his own stuff. And it was tough to be his lawyer because he would go ahead and draft the stuff himself. Irving Bass, the late Irving Bass, was a trustee. His son, Larry Bass, was and is a partner with us. And his brother Bob Bass practices in the Valley. [Back then, the referees] appointed the trustees.

Q: Did each referee have his own trustees?

Pretty much the ones they could rely on, knew their habits. And remember that the good employment generally was acting as a receiver because we used receivers in chapter 11 out here.

Q: Why did you use receivers?

Because the judges were distrustful of debtors in possession. They didn't believe the reports would be given. They felt they wouldn't be done right. They didn't feel that the necessary taxes would always be withheld and paid. Remember, chapter 11 was still a pretty new game then, about 10 years old at that time. [The receivers were A. J. Bumb [who] was heavy with Russell Seymour. Doug Wikle was heavy with John Bergener. Irv Bass was heavy with Joe Rifkind, that kind of thing.

Q: Did they appoint a trustee at the first meeting of chapter 11 cases that would be a standby trustee in case the case converted?

Usually. Certainly the receiver could wind up as a trustee. It worked well here. I remember there was an occasion, when [Irving Bass confronted] Asa Herzog at a judge's meeting because Asa Herzog, in effect, said, the reason they have these receivers out on the West Coast is patronage. It really was not patronage. There may have been a receiver who was in some way or other a friend of, or known to, a district judge, and the district judge might say to the referee this is a fine young lad to make one of your receivers, but basically it would have been a scandal had any of them been connected.

As a matter of fact there was one referee in San Bernardino who was asked to leave because his trustee bought him lunch every day. I mean, maybe a receiver would drive a judge home if they lived near each other or something, but there was never a hint of scandal. There was a "ring" in the sense that these were the guys who were known by "their referees" as very good at handling operating chapter 11's...A. J. Bumb started by working for and with George Goggin. Goggin was employed in operating cases because he was a businessman who knew how to manage such cases.

Q: Tell me about some other cases you remember.

One was Brisbane, a metal outfit. One was Jumbo Steel that had a couple of dips into chapter 11. There were developers; there were Hollywood type characters, like Peter Lorre. Bob Shutan, I think, represented Peter Lorre. I had forgotten. Then there was [Herman] Hover who ran *Ciro's* [nightclub]. [And] I saw a lot of Hollywood names in cases that I can't even remember now. But there were, and then in the early '60's there came the trust deed scandals, and that is what really got me solidly into bankruptcy.

I undertook to write a chapter for continuing education of the Bar on common law assignment for the benefit of creditors. Nothing had ever been written on that before, and it became a kind of basic thing. And so it got known even though I didn't do a lot of assignment work, but board of trade, credit men did, and it was a good article I think.

The Trust Deed Scandals

In the early '60's and after the war, there was a lot of money around that had been

stowed away in savings, maybe some of it was in safe deposit boxes, or hidden under mattresses from black market activities. There sprang up a group of lenders, now overtaken by the great commercial lenders, [who lent on] on accounts receivable and inventory. Then you had to go through some formalities to assign accounts receivable and could attack them in bankruptcy. Then in addition to that, there were outfits which sold second trust deeds. And there was an organization run by a bishop of the Mormon Church who had an organization called Los Angeles Trust Deed and Mortgage Exchange, and he had a place downtown with a big board like a stock market board and it would list second trust deeds available. So that you not only got 10%, you got 10% secured as they said. Well, they were second trust deeds mostly. This was so successful because people wanted secured investments and 10% was marvelous.

And he began running out of inventory. I mean, how many trust deeds are there? So he would begin to make investments with developers and help them lend the money to buy the land. He would then get second trust deeds on each of these lots. And then, this became so successful, he began running out of that inventory. And he would help a developer obtain a piece of land, maybe on a hill that hadn't even been subdivided. There were no lots. You just put a grid down. The grid may show a nice little lot, but only a mountain goat could get up it you see, and he would take that and create a second or a subordinated trust deed. He would personally take back an interest in the shopping center that would be developed as part of the tract. The Securities and Exchange Commission said he was selling securities, and they attacked him and he went into chapter 11, and I think it was an involuntary.

[His name was David Farrell] and this man was examined so many times that he became one of the most skillful testifiers you would ever want to see. Man, you had to admire him. He was just as good as he could be. (Laughter) And it was an important enough case so that three co-trustees were appointed, and [Arnold Quittner and I] were the main attorneys [for the trustees].

And Arnold and I handled that case and we got other second trust deed cases. This was such a blow to the California real estate market that the Attorney General of California appointed a special assistant, Dave Richmond, who formerly

had done maybe part time refereeing back in Connecticut and was out here, silver haired gentleman who the Attorney General appointed just to follow second trust deed bankruptcies because the Attorney General wanted to be sure that unfair advantage was not taken, that there were not too many foreclosures, it was not a chapter 11. It was a bankruptcy [case] because there weren't that many chapter 11's.

[Another case was] Yuba Consolidated Industries. It was up in San Francisco. I was attorney for a bondholder. It was a [chapter] 10, and it was run by Chief Judge Harris of the District Court. He handled that case himself, didn't give it to a trustee. And Sam Ladar of the Steinhart firm acted as kind of a trustee or attorney for the trustee, I have forgotten, he played a very strong role. And August Rothchild and I were co-counsel for a debenture group, for a group of bondholders. And that case was a major case.

It was a big company. They had a steel company. It grew out of the dredging, gold dredging work, industry on the Yuba River. And they [put] themselves into bankruptcy, [and] there was a major, major valuation fight. It was the most important valuation fight I was ever in because the SEC participated in it very strongly. Stuart Kaplan in San Francisco worked with Odenweller who was the main guy for the SEC, and Stuart Kaplan, that is where I met him. He was a major part of that as a young man.

Q: By the time of the 1960's, how many people did Gendel, Raskoff have? When did it become Gendel, Raskoff, Shapiro and Quittner?

It became Gendel and Raskoff after Chichester left. I never cared about having my name in the firm, and Raskoff had been there about a year before me or so. Almost as soon as Raskoff became partner, I became partner. Arnold finally wanted his name to be in the firm, and I said fine, make it Gendel, Raskoff and Quittner. I didn't care as long as, I felt whatever I was, I was, and people would know, but my suggestion was absurd. Arnold said, it would be crazy for me to be in the firm name and you're not. So very quickly we decided to become Gendel, Raskoff, Shapiro and Quittner.

National Bankruptcy Conference

Francis Quittner and George Treister [nominated me to the NBC in 1962. I met George Treister at] just about at the

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beginning. George, I think, was with the U.S. Attorney, and I think we both must have started close to the same time although he is younger. And I think, I remember addressing the Bankruptcy Study Group [a local Los Angeles group] on a fairly intricate question of assignments for the benefit of creditors. [The Study Group] was a group that Francis Quittner and Martin Gendel and myself and Nemer created in order to have some scholarship brought into the field.

There wasn't much scholarship [at that point in time]. Bankruptcy was thought of as people who were on motorcycles hustling claims in order to elect trustees so they could be attorneys for the trustees. They were right in the perception until guys like Gendel and Quittner, Buchalter, and Charlie Katz began rising to prominence.

Q: So I guess the impression the Bar had of bankruptcy was pretty bad?

Yes, it was and that's why certain major firms had no bankruptcy sections and favored giving their bankruptcy business to certain firms that they felt were responsible, were scholarly and would never bring them into disrepute.

Q: Was it primarily populated by Jewish lawyers at that time in Los Angeles?

Yes, it was largely Jewish practice. Well, I can't explain it, maybe because part of it, some of it arose because there were lenders or accounts receivable financiers who were backers. The major factors were garment people, partly maybe just because the Jewish lawyers were hustlers and some areas were not open to them. I hadn't thought about that as to why it happened. Maybe it's because some of the larger firms were not opened to them, didn't hire Jews. And where would they go? They had to create fields for themselves.

I started to mention [how I got into the National Bankruptcy Conference]. I addressed the Bankruptcy Study Group on a fairly intricate question, assignment for benefit of creditors where the Supreme Court of California had rendered an opinion that left a lot of questions open as to the status of an assignment for the benefit of creditors.

And I did my best to try to analyze that line by line or page by page. And I just remember afterwards that George [Treister] came up and said something com-

plimentary, and I heard from somebody else that he thought that was pretty good. And to my shock and surprise [I was elected]. I never thought anything about the National Bankruptcy Conference.

Q: Who do you remember meeting? Did you know any of the people other than the West Coast people who were in the Conference at that time?

No. I didn't know Charles [Seligson]. I didn't know Sidney Krause, [or William Rochelle]. I went back [to Washington, D.C.] for that meeting the first time and met Charles Seligson and Sidney Krause. Sidney Krause was a wonderful man, so was Charles. Both took me in hand as though I were an old friend and their equal, and took me up to Asa Herzog's room where Asa and Ruth were. And Asa had to have some insulin or something at that time, and Ruth was, as always, was his nurse. And then Charles and I, and Sidney Krause, [took] a walk. And I was treated immediately as though I were one of them. That was a wonderful. I have a very, very warm and collegial feeling about the National Bankruptcy Conference even though today it is not the same. I mean it isn't the same as it was with that group. They were very close, very close.

Q: What is different about it?

They were warm and collegial, and they were a little bit different as the practice of law now is different. It's greedier, it's more adversarial, nastier, nastier by far. And proliferation of paperwork and parties to proceedings have all multiplied so you are a little more distant from the others in the field. The NBC has gotten somewhat bigger, but not all that much bigger. We kept it down below 60, and now it's 67.

Q: Do you remember anybody, does anybody else stand out at the time at which you started with the NBC and became a member?

Professor McLaughlin [was one]. Well, there was one meeting, and it might have been the first, it might have been the second, when McLaughlin and Moore of Yale were both there. [Ben] Weintraub was a major figure. George Natanson, a lawyer from New York who handled lenders, was a very good lawyer. Sidney Krause of Krause & Hirsch, was wonderful.

Frank Kennedy was head of the drafting committee, spectacular work. Vern Countryman [was also there]. And refer-

ee Carl Frebolin from Cleveland, a great man. Estes Snedcor, one legged referee from Portland, [was] important. [And there was] George Brody, a young man. And the dynamics were that we worked through committees as we do now, but there was a great amount of committee correspondence. There was a great deal of correspondence among the conferees during the year before the meeting in October. And it went at a more leisurely pace, but the Conference would vote a proposition and it would go to the Drafting Committee. The Drafting Committee would then draft it. That's Frank Kennedy, Treister, the drafters. Then the whole Conference would consider the draft. It took a long time. Sidney Krause was absolutely spectacular at that. He would sit near Charlie Seligson, not as an officer of the Conference, but he was remarkably effective in analyzing the drafts of legislation.

Charley Seligson became chair, and Kennedy was the chair of the Drafting Committee. And everybody stopped and listened when Sidney would ask his questions, and he may never have seen it before that minute, but he was remarkable at picking it apart. Very gentlemanly guy.

[And] Harry Margolis was there. Harold Marsh was a member. He was everything. I mean, there wasn't anybody like Harold Marsh. He was contracts, he was securities, he was bankruptcy, he was corporate, and he was corporate securities. [He rewrote] the Corporations Code in California. There was no one that I know of who had a national reputation as a scholar and a teacher in that many fields. And also the most undisciplined tongue. [Laughter]. Well, he would say whatever he had on his mind. If you were a fool, he said you were a fool. I mean he, Harold, was remarkable.

Yes, I remember [Homer] Kripke very well. [He was a securities lawyer] and very respected. I don't remember when Jerry Smith from Phoenix came on, but he's been a respected member for a long time. Russell Hiller, a bankruptcy referee from Philadelphia, who was not outstanding, but always a very warm and caring person. Royal Jackson who really came up through the [Administrative Office in Washington]. Kind of an unusual thing, we don't have that any more. Pete Loiseaux, who went emeritus very early in the game from [UC] Davis as a teacher, was a member. It was an unusual group, and they corresponded and committees would meet in the middle of the year just

on their own, go to N.Y., go to Chicago. There isn't a lot of correspondence during the year now. There's kind of a leadership group that takes an initiative now.

Q: How responsible do you think the NBC was for the 1970 Bankruptcy Commission being formed?

I think it was very important. I can't remember what we did to make it happen, but you see in those days there wasn't a great interest in bankruptcy so if you wanted something done in the Congress, the legislative chair in the Conference could get it done through Congressman Manny Celler. [He was] from Brooklyn, in the House of Representatives. He was the chair of the sub-committee of the Judiciary Committee that had jurisdiction over bankruptcy.

And Murray Drabkin, who is a member of Conference but wasn't then, but was very active in the 1978 Code representing the bankruptcy judges. Murray Drabkin was a staffer maybe for the Senate, no for the House, and Murray told me only recently if you wanted a statute passed you went to the staff and it was done, if it was right. Because nobody paid any attention.

And I guess a leadership group, of which I was not a part at that moment, somewhere along the line started the idea of this commission And I suppose it was not hard to get it through the sub-committee and therefore through the House. It took them a long time to fund it.

Q: How do you suppose Harold Marsh ended up being a chair of the Commission?

I don't know. He was a Republican, and Nixon was in office. It looked as though Kennedy could not be the Executive Director [of the Commission]. Charles Seligson was appointed, of course, as a member and it would look as though Frank Kennedy could not be the executive director because I think maybe he was a registered Democrat, I don't know. Harold Marsh said take me off if you don't put Frank on, he is the one I need, and they knuckled under and appointed Frank. Jerry Smith I think did work for them. Ron Trost did work for them.

I first met Ron Trost when he was working with Quittner, Stutman, & Treister, and we had a case against each other. Trost [represented] Beverly Franilla and I represented the Los Banos Dairyman's Association who had received a very sizeable preference. [Laughter] And Ron was out to undo that preference.

So I went up to the Dairyman up in the

mountains in Los Banos, and they were really very upset because that case meant a lot to them as to whether they would ever raise that kind of money. And Ron represented the receiver or the trustee. I did a lot of research and the question was a very, as I saw it, a very sophisticated question concerning the existence and power of a receiver in a chapter 11 after confirmation. They tried to get around the Whiteford Plastics case by saying they were going to give part of the recovery to the creditors so it wouldn't all go back to Beverly Franilla. I saw that they could probably finesse Whiteford Plastics, but the question to me was - how could a receiver who was not a trustee, get the power after bankruptcy to bring an avoidance action? And I went in to the cases before there was a God. I went to cases before there was law. I took cases you never saw before in your life and we did like a 70 page brief, and Ron Trost then decided he wanted to do a 2004 examination and he subpoenaed all the records and the gentlemen from Los Banos, and he started his examination. I think it was before Ray Kinnison.

[This was before 1973 when the Bankruptcy Rules went into effect.] We did it before the referee and Ron started asking some questions and I said I don't know what the purpose of these questions is. If what you want to prove is that my client had knowledge of insolvency which was, of course, a key, they were insolvent and they had knowledge of insolvency or reasonable cause. I said I'll stipulate that they had reasonable cause to believe that the debtor was insolvent. Ron looked at me like I had lost my senses. [Laughter] And I said is this examination over? He said oh, yes, it's over. So afterwards we started to talk and I told him what I felt was the problem. He said he knows that is the problem. Let's brief it and give it to the bankruptcy [referee]. Well, we did and I lost. We went up before a District Judge, Laughlin Waters, and I lost there.

We settled it in a way Los Banos Dairyman could live with and in a way Ron had a very substantial recovery, but from that time on we became very, very good friends because it was clear we both spoke the same language, had the same ideals, had the same concept of the strategy of a case so we became very close. He is a marvelous lawyer.

The '60's were primarily governed by, in the West, by these trust deed cases.

They were enormous. Huge properties involved. All up and down the State. Criminal actions and there were a lot of

other cases besides L.A. Trust Deed & Mortgage, there was Sierra Oil which was a chapter 10 and Martin [Gendel] handled it out of Las Vegas. And criminal matters as well.

There was a chapter 10, Jade Oil, that we didn't have much to do with but George Treister was the major thinker for the firm on that, and I think handled it himself. George didn't handle all that many cases. He played a different role which is absolutely essential to the law firm, but I don't that he handled many cases. Jade Oil was a major chapter 10.

I handled a chapter 10 case for a trustee, but it was one in which the special master was Ray Kinison but U.S. District Judge Charlie Carr, a character in his own right, handled all the motions.

I was in [the Waltham Watch] chapter 10, it was probably the second or third iteration of the Waltham watch bankruptcy. A large case. Large dispute with Norris Grain and other outfits. They were in more than one business but no longer made watches.

So there were major cases, but my memory of the 1960's was primarily the trust deed cases, and the interest I was taking in the National Bankruptcy Conference, and lecturing.

Q: What about the 1978 legislation? How much involvement did you have in influencing them?

Well, of course, there was Commission stuff before the Code where decisions were made in the '70's, and one of the things Ron Trost did was to involve some of us in answering certain seminal questions that he thought were important for the Commission, such as "Do you think there ought to be more than one chapter? What should we do about chapter 10 and chapter 11? If you put it all in a new chapter 11 that combines other chapters as well, should there be an involuntary?" Because there were no involuntary [chapter] 11's, [only involuntary chapter 10's].

[The Commission] wanted a different kind of bill. It took several mutations, but they wanted a different kind of bill than we wanted. One of the things they wanted was Article III [status for Bankruptcy Judges]. [The NBC also] wanted Article III [status]. [Later] it did become important and it was on our agenda, and I remember bringing a pamphlet that was created by Ken [Klee] and Rich Levin to the Judicial Conference for the 9th Circuit which took place in Hawaii. I was asked by District Judge Irving Hill to be

continued on page 14

Barney Shapiro*continued from page 13*

his guest. Rich Levin called me and said we just finally got the print from the government printing office as to the opinions of the professors of constitutional law and whether it is constitutional or not constitutional to give this much power to the bankruptcy courts, and if he had this messengered to me in L.A. will it be in time to take to Hawaii and pass it among the District Judges? Which I did. And you can imagine how much attention they paid to that!

Q: It must have gone over like a lead balloon.

Well, Judge McBride from Sacramento, very well regarded District Judge who was a couple of years ahead of me in Boalt Hall, when I raised this he said "Well, I just don't understand what's wrong if I appoint my old friend so and so as my referee." And I said "Well, start from point one, he's not your referee, judge." Well, he punched me in the arm gently in a friendly way and said "Well, Barney, you know what I mean." I said "No, that's important. That's what we're trying to get away from. He is not your referee. He's a bankruptcy judge." "Well," he said, "I'm beginning to get the point. You understand sometimes you have to hit a mule over the head with a 2 x 4 before he understands. And I'm like that." It meant nothing. He didn't care for a second. (Laughter)

I think one of our major differences [between the NBC and the District Judges was] the question of the U.S. Trustee as distinguished from the Administrative Office. That was a big difference. They didn't want the U.S. Trustee. And we didn't know if we wanted the U.S. Trustee. We wanted something. But we wanted it in the Executive Branch. I can't say now how much difference that makes in the light of the way the agency has gone, but the concept was important to us. And we felt that the Department of Justice was the agency in the Executive Branch that had the credibility that everyone would trust.

Q: How do you think the U.S. Trustee worked out as it turned out?

I don't think it has worked out very well; and I think it was not adequately funded. We have always said in the National Bankruptcy Conference we believe that a U.S. Trustee is important to the system, adequately staffed, adequately funded,

and I don't believe it's been adequately staffed, and I don't believe it's been adequately funded. And so far as I know the money that is raised, that we pay to the U.S. Trustee doesn't go to the U.S. Trustee's fund, as so far as I know, just as the Referee's Salary & Expense Fund never went to the Referee's Salary & Expense. They used it for other purposes.

On the other hand there are times when the U.S. Trustee steps in and no one else has enough interest in defending the system except the U.S. Trustee. There just should be more of that and they should know where to come in and where not to come in, and that's the thing. I think they are gradually straightening that out. I think they are getting better.

Q: How is it that the National Bankruptcy Conference has so much influence on national legislation?

Look at the effect the NBC group had in 1994. It's been remarkable. When you look at S. 540 when it started and the way it's turned out, the difference is enormous and largely due to Ken Klee and Steve Case and the National Bankruptcy Conference. The leadership group in the National Bankruptcy Conference really did a hell of a job. When we went to the Congress, and when we started this year in January, after the last meeting of the Conference, after October of last year, we had no influence anymore in Congress. By then Congress staffers had been convinced that we were just a bunch of theorists who we were out of touch with where the world was as far as legislation.

Q: Was it the ABI that created that perception?

Well, they certainly wouldn't be out of the picture. (Laughter) and when you say the ABI, the American Bankruptcy Institute, you're talking about an enormous number of people. I'm a member; but there may have been some leadership people there who felt that we weren't in the picture. Now the ABI had substantially no influence on the 1994 legislation except their proposed chapter 10 which went out the window. [But] what happened was that Ken Klee, Steve Case, and I kept going to Washington, and the credit really belongs to Klee and Steve Case. And there were a lot of people like that, Gandy down in Texas, Ralph Mabey in Utah, and many others who waded in when it was necessary on a specific subject. But we kept going there, and Larry King, but he was in Israel part of the time.

The thing we decided, Larry King was part of this decision, if there is a proposal that the staff was attracted to but it was written so badly that it really didn't make any sense, should anyone be tempted to leave it alone because it probably would be unenforceable because it didn't make any sense, or would you say to the staff look we oppose this whole heartedly and we don't want it; but if what you want to do this, it ought to be written in the following way so the legislation makes sense and no one is held in disrepute for faulty drafting. We decided to go the latter course. That was a big decision. We felt we couldn't have credibility with the staff that we wouldn't be honorable unless we treated everything that they did that way, and we did. I say we, the real drafters were Ken Klee and Steve Case, and in drafting it was really Ken Klee. We kept writing to them, and they would call and they would say well, don't be general about it, if you want it, then draft it, or if you don't think this is drafted right, draft it. Help us draft it.

Everybody does that in the Congress. They always, you have to draft it for them and help them draft it. These are very bright, hard working people on the staff, but they can't handle this bulk of work.

Q: Do you think there's going to be a dog fight over who is going to be on Bankruptcy Commission?

Yes, it will be political, highly political. It could be the political types who make it. I have written to Cindy Lebow who is in the Department of Justice, and she's advisor on these kinds of matters I guess for the White House. And I wrote her and said you know the political process will work its way through, but it would be a shame, even deplorable, if at least a member or members of the National Bankruptcy Conference will not be on the Commission. And I can think of Ken Klee, Liz Warren who helped a lot, Larry King, Steve Case, and Dave Coar. I mean just pick people who have had an association with a variety of problems that we are talking about to be on that Commission. I don't know if they will make it. ☹

Editor's Column

Cecily A. Dumas, Co-Editor



▲ Cecily A. Dumas

During the recent government shutdown, I called Hon. Alan Jaroslovsky, Chief Bankruptcy Judge of the Northern District of California. He had just signed an order declaring all bankruptcy court employees in the district to be essential. I asked him how the shutdown had affected the court.

His reply was succinct: "The impact of the shutdown on our court is simple. We are all at work and none of us - except maybe the judges - will be paid for our work after the next paycheck until the shutdown is over. We will remain open and continue to work even if the paychecks stop." Many courts around the country adopted this approach, fulfilling their responsibilities even with the imminent prospect of not being able to make payroll.

As we all know, funding was restored and employees paid. But the end of the crisis didn't solve the chronic underfunding of the federal judiciary - a problem made even worse by the sequester. In October, the chair of the Senate Judiciary Subcommittee on Bankruptcy and the Courts, Sen. Christopher Coons (D.Del.), sounded a warning: "When an investor anywhere in the world looks to make a bet on a new company, a new idea, that investor will obtain rights in exchange. Those rights may include a share of equity or a priority right in the event of a liquidation. What gives those rights meaning is ultimately a highly functioning, impartial, and reliable court system. That historically has been one of our great advantages competitively in the world economy. Our courts, even while plagued by persistent vacancies, lack of authorized new judgeships, and the sequester, continue to perform this vital function. Without these courts, these rights mean nothing."

We rely on the members of the bankruptcy bench and their staffs to do more with less. The Office of the U.S. Trustee faces similar budget constraints. We should not forget that, as Senator Coons put it, "real jobs and real lives [are] hanging in the balance." As the most respected members of the bankruptcy bar, College Fellows are uniquely situated to show our support for the bankruptcy court system - the people who enable us to do our jobs and serve our clients. We need to do what we can to make a difference. 🏛️

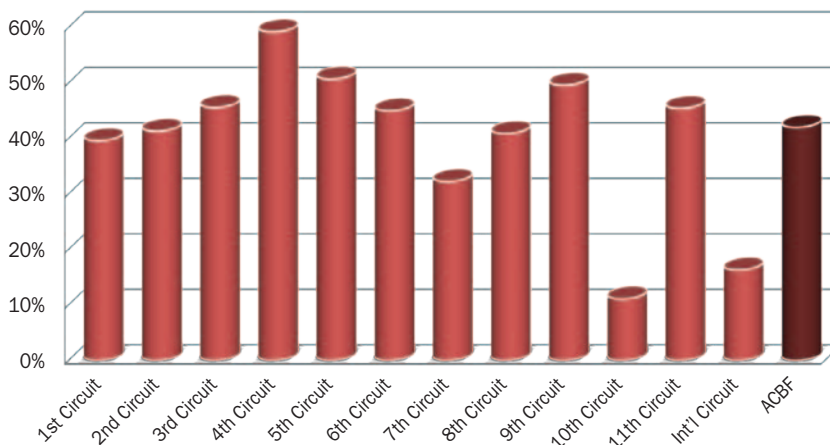
How is MY Circuit Doing?



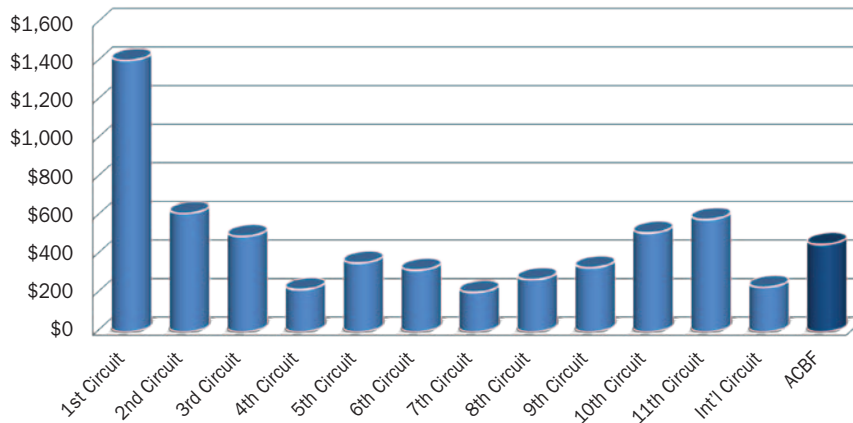
With many thanks to our Foundation numbers guy and Treasurer, Tom Lumsden, please find below statistics for the Foundation through November 30 with the % of Fellows contributing to the Foundation by circuit and in total. The second chart shows the average

contribution per Donor by circuit for your reference. As you can see from the pro bono grants on page 18, the needs throughout the country are tremendous and YOUR dollars are being put to excellent work. 🏛️

2013 Percentage of Fellows Contributing to ACBF thru November 30



2013 Average Contribution per Donor to ACBF thru November 30



In Memoriam



David Allard
October 7, 2013



Joseph Braunstein
September 26, 2013



Herman Glatt
September 8, 2013

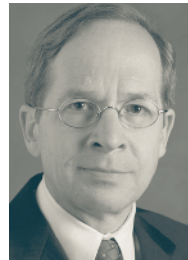


Stuart Hertzberg
November 4, 2013



Joel Zweibel
September 25, 2013

New Scholar-in-Residence



▲ Prof. Douglas Baird



▲ Prof. Bruce Markell

The Board of Directors appointed Prof. Bruce A. Markell as the College Scholar-in-Residence. Prof. Markell succeeds Prof. Douglas Baird, who served between [2009] and [2013]. We are deeply grateful to Prof. Baird for his many contributions.

The Scholar-in-Residence serves an important role in the educational activities of the College. Under the Bylaws, the Scholar-in-Residence "shall arrange and conduct the educational programs of the College, attend meetings of the Board of Directors as an ex-officio member, advise the officers and the

"Douglas Baird has been a great Scholar-in-Residence. His educational programs have been invariably thought-provoking, and the College is extraordinarily fortunate to have had his wise counsel over the past four years."

– D.J. (Jan) Baker, ACB Chair

Board of Directors on educational and other academic activities of the College, may undertake, organize, or supervise research and other study and review in the field of creditors' rights, including the preparation and publication of Articles and other written materials, and shall perform such other special tasks for the College as the Chair, President or Board of Directors and Scholar-in-Residence deem appropriate."

2013 All Fellows Luncheon

continued from page 1

The former judges had different views on how the practice has changed, with Judge Leonard noting there are more civil trials and Judge Gonzalez noting inter-creditor disputes are both more sophisticated and more mean spirited. Judge Clark noted clients were getting more difficult and Judge Fitzgerald noted the increase in administratively insolvent cases (asset sales followed by a motion to dismiss).

The judges' advice for new judges were: be careful what you say, since the

Prof. Markell is superbly qualified for his new role. In addition to being a Class 12 inductee to the College, Prof. Markell is a member of the American Law Institute, a conferee of the National Bankruptcy Conference, and a charter member of the International Insolvency Institute. He served as a United States Bankruptcy Judge for the District of Nevada from 2004 to 2013 and as a Member of the Bankruptcy Appellate Panel for the United States Court of Appeals for the Ninth Circuit from [2007] to [2013]. Prior to his appointment on the bench, Prof. Markell was the Doris S. and Theodore B. Lee Professor at the William S. Boyd School of Law at the University of Nevada Las Vegas, and before that, he was a professor at Indiana University – Bloomington Law School. This past summer, he joined the faculty of Florida State University College of Law as the Jeffrey A. Stoops Professor of Law. Prof. Markell has written extensively on bankruptcy and commercial law topics. He is a Contributor and Member of the Advisory Board of *Collier on Bankruptcy* (16th rev. ed.). He consults regularly with the International Monetary Fund, visiting Bosnia-Herzegovina as part of their mission there. Prof. Markell's love of teaching comes through in his four casebooks in Contracts, Secured Transactions, Bankruptcy and Securitization (three of which were with College fellows David G. Epstein and Lawrence Ponoroff), and through various study guides in those subjects for students. Welcome to Prof. Markell! ☞

"I am honored to be named the Scholar-in-Residence, and hope to carry forward the high standards set by Professor Baird and his predecessors. I plan to organize education programs that all members of the College will enjoy."

– Prof. Bruce Markell

lawyers listen to and hang on to every word you say; publish nothing in your first year, since it will only embarrass you in your 5th; realize it takes five years before you will know what you are doing; realize that you are not as powerful as you think you are and that power is best left unexercised; and avoid isolation.

The judges' advice for counsel was to be straight forward, file shorter briefs, revive professional courtesy and to stop trying to read the judge's mind.

With those comments and a fine menu the Fellows enjoyed an informative and sometimes humorous luncheon. ☞

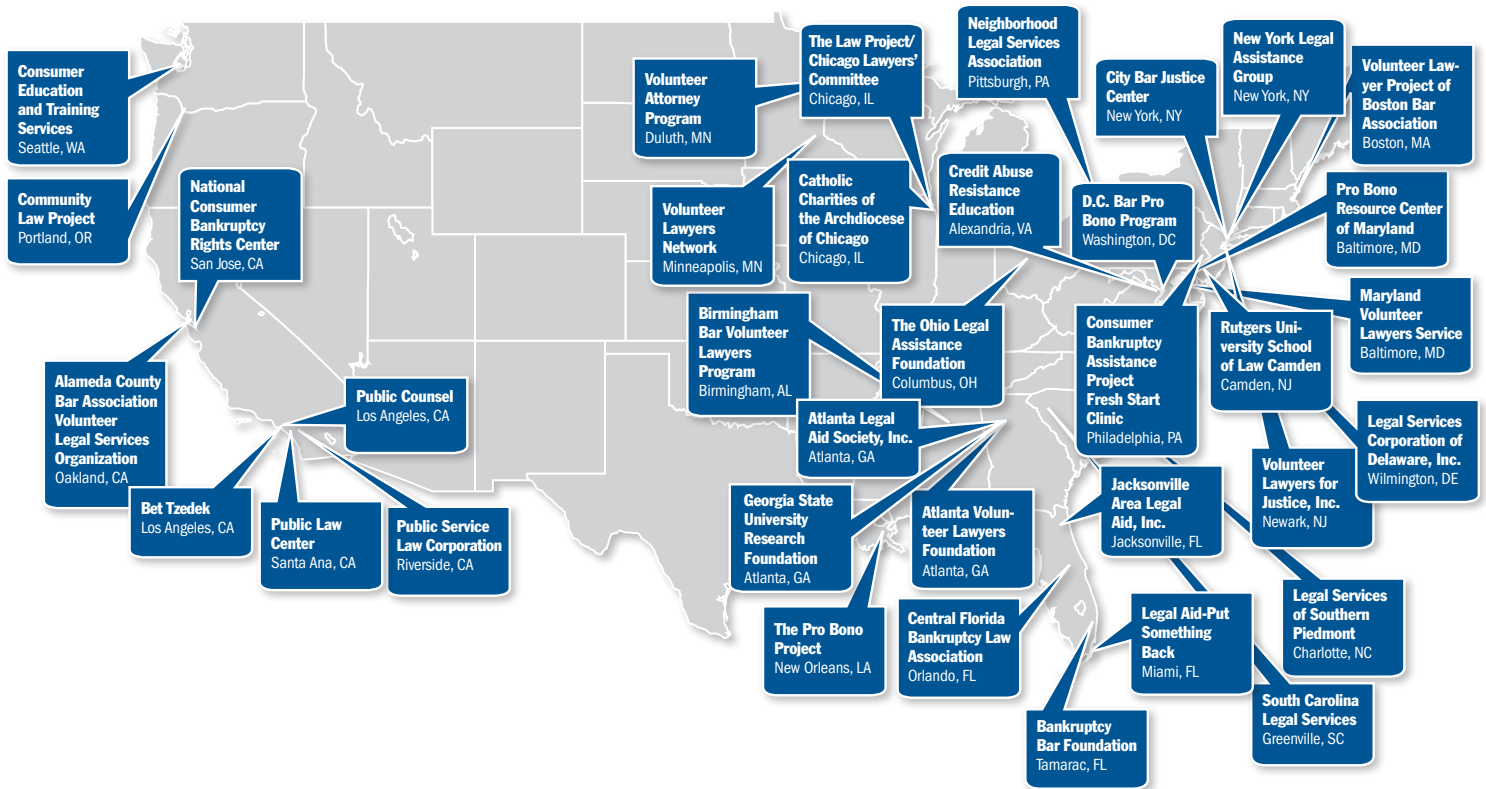
2013 Foundation Donations

As of Dec. 3, 2013, 317 Fellows have donated nearly \$138,000 to the Foundation. Please note that you may make a Foundation donation at any time. Simply visit www.amercol.org to access the online donation form.

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