

# College Columns

News and Views from The American College of Bankruptcy

## Publications Committee Report

By Evelyn H. Biery



▲ Evelyn H. Biery

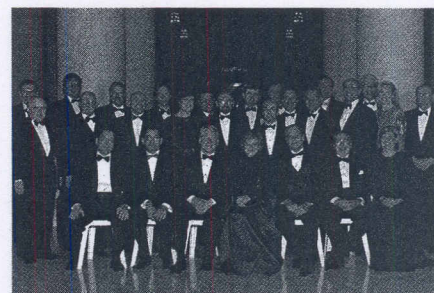
The Publications Committee met in Washington, D.C., at the March meeting of the College. We discussed several projects, and we welcome the thoughts of the Fellows on each of the projects.

- (a) We will start adding several examples of judges' favorite stories, all humorous, we hope, to the *College Columns*. Any judge who has a humorous event to relate should forward it to me at the address shown below.
- (b) We will also include stories about lawyers who have a life outside the practice of law. You will see the first of such reports later in this issue of the *College Columns*.
- (c) We will also publish information on the achievements and honors of our Fellows.
- (d) Perhaps most exciting of the projects of the Publications Committee is to begin the process of collecting articles for publication and presentation in the form of a Memorial Lecture in honor of someone who has contributed to the ethics and integrity of the profession.
- (e) We will also publish a paper on jurisdiction and other papers that may be submitted by the National

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## Induction of Eighth Class

By Evelyn H. Biery



▲ Eighth Class of College Fellows Induction

The Eighth Class of the College was inducted on the evening of Friday, March 7, 1997, at the Great Hall of the Supreme Court of the United States. In an extremely impressive ceremony, the members of the Eighth Class were introduced to the membership and then enjoyed a cocktail reception with the other Fellows of the College and honored guests.

Lloyd N. Cutler presented the induction address. Cutler spoke on the perils of public service, primarily the sacrifices that are made by elected officials and also those made by persons such as College Fellows, who give up their time for the public good.

Lloyd Cutler has been Senior Counsel

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### Mark Your Calendar

Thursday, October 16, 1997  
Philadelphia, Pennsylvania  
College Fall NCBJ meeting scheduled  
See schedule on page 10.



**Officers and Directors:**

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4th Circuit

Joel P. Kay  
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David G. Heiman  
6th Circuit

Gerald F. Munitz  
7th Circuit

Hon. Mary Davies Scott  
8th Circuit

Hon. Lisa Hill Fenning  
9th Circuit

Hon. Glen E. Clark  
10th Circuit

Robert B. Rubin  
11th Circuit

Susan M. Freeman  
At Large

William J. Perlstein  
At Large

Vernon O. Teofan  
At Large

**Scholar-in-Residence:**

Leon S. Forman

**Counsel**

William J. Perlstein

**Executive Director:**

Suzanne Bingham

American College of Bankruptcy  
11350 Random Hills Rd., Suite 800  
Fairfax, VA 22030-6044  
(703) 934-6154 Fax: (703) 802-0207

## All Fellows Meeting

By Evelyn H. Biery

On Saturday, March 8, 1997, a Meeting of the College Fellows was conducted in Washington D.C., at the Cosmos Club.

The All Fellows Meeting was chaired by Board Chair Gerald Smith, who introduced the new officers and directors.

Suzanne Bingham reported on the induction ceremony and those who attended, and the luminaries who attended, including Justice Scalia, German and Canadian Embassy officers and other dignitaries. A total of approximately 300 people attended, including Fellows, new Fellows and guests.

Jerry Smith reported on the finances of the College and on the prospect for intranet communications.

After lunch, Leon Forman reported on the focus groups of the College with respect to the National Bankruptcy Review Commission and indicated that the focus groups will be made permanent.

Brady Williamson and Larry King presented a report on the work of the National Bankruptcy Review Commission. Brady Williamson, Chair of the Commission, reported that, as to consumer bankruptcies, the National Bankruptcy Review Commission ("NBRC") has prepared a white paper, a framework of a dozen or so ideas for change in Chapters 7, 11 and 13 to make them more efficient, more effective and less expensive. These suggestions represent proposals for change, subject to additional refinement and even better ideas. They do not change the Bankruptcy Code but are designed to prevent serial filings and provide positive incentives for Chapter 13 relief rather than Chapter 7 relief. The white paper was sent to a mailing list of 300.

As to small businesses, Brady Williamson reported that there has been considerable discussion regarding proposals, but that they will not be ready until October.

Brady Williamson noted that the National Bankruptcy Review Commission gives the opportunity every 25 years or so to step back and define the shape of the forest as it presently stands and then to propose to

Congress a new shape for the forest. Brady Williamson noted that no other organization has been more active in the work of the National Bankruptcy Review Commission than the College and its members.

Larry King described the final temporary proposals. The Commission members have the opportunity to change their minds between now and October 20. The report will probably not have a draft statutory provision on every proposal but may have a draft provision on a few sections in order to explain the proposal more succinctly. The National Bankruptcy Review Commission has decided to recommend Article III status for bankruptcy judges, with vacant slots being filled with Article III judges as the term of each bankruptcy judge expires. As a consequence, the transition period would be as long as 14 years. In the meantime, all emoluments will remain for bankruptcy judges. That kind of change would be done on a district-by-district basis. The circuits would have the flexibility and the authority to transfer an Article III judge to a location where there was an overload, such as where a mass tort case was filed.

As to the appellate structure, Larry King reported that appeals would go from bankruptcy judges to circuit judges and skip the district judges, even if Article III status is not provided to bankruptcy judges. Also, there are recommendations as to interlocutory appeals. It would be put into 28 U.S.C. § 1293. The old pre-Marathon version of Section 1293 provided for appeal by agreement to the Circuit Court. On venue proposals, the suggestion was to delete the state of incorporation. There is also a proposal to change the affiliate filing standards. Under the proposal, the affiliate can follow a parent to a particular district, but the parent cannot follow the affiliate. The working group is continuing to revise its proposal. The avoidable preference working group is looking to unfairness to some of the smaller creditors. Another working group is looking at Chapter 12 and the United States trustee system. Another working group is looking at questions of service to the estate and ethics. There is a discussion of the idea of disinterestedness regarding

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## Kudos to Gerald K. Smith

By Raymond L. Shapiro



▲ Gerald K. Smith

Jerry Smith's term of office as Chairman came to a close at the Washington, D.C. meeting in March. Jerry is a walking ad for Nike; he lives by the slogan "just do it."

He served the College as a quietly effective leader. He had a vision for success and then went about implementing his programs without concern about who received the credit. During his tenure in office the pronoun "we" replaced the pronoun "I".

His personal commitment to excellence has elevated the College in so many ways. All of us are the beneficiaries of his superb skills, personal generosity and total dedication to enhance the bankruptcy practice and to improve the public's perception of our chosen field of endeavor.

Jerry can feel good about all he has done and all that he has accomplished for the College as our chief executive. We are grateful for his contributions and extend to him an enormous "Thank You" for his outstanding leadership. 🏛️

## On-Line Committee

By Ronald M. Martin

The On-Line Committee has gotten approval from the Board of Directors of the College for a new "intranet" system that will initially be used by the Board of Directors. The price of our intranet system, which we will be using through Office, will be considerably less than the price of an internet web site.

It is anticipated that, after initial use with the Board of Directors we will proceed to examining Board approval for all Fellows to be involved on-line through our intranet system.

We will keep you posted on our progress so that we can all stay more in touch. We will be sending out soon our latest update of internet addresses for the Fellows so be looking for that soon. 🏛️

## Outstanding Educational Program

By Suzanne A. Bingham

Congratulations to Leon S. Forman, our Scholar-in-Residence, who assembled and coordinated our educational program on Saturday, March 8, in Washington, D.C., and participated in the program. His youthful vigor was evident throughout the meetings, and we praise him for the success of our educational sessions.

We are also grateful to all of the presenters who contributed their time, energy and expertise. Their outstanding efforts are appreciated by all who attended.

### Panelists

Professor Charles Mooney  
University of Pennsylvania Law School

Professor Elizabeth Warren  
Harvard Law School

Professor Lynn LoPucki  
Cornell Law School

Harvey R. Miller, Esquire  
Weil, Gotshal & Manges

Leonard Rosen, Esquire  
Wachtell, Lipton, Rosen & Katz

Bernard Shapiro, Esquire  
Murphy, Weir & Butler

Professor Lawrence P. King  
New York University School of Law  
Counsel, Wachtell, Lipton, Rosen & Katz

Brady C. Williamson, Esquire  
Honorable Lisa Hill Fenning  
Honorable Paul Mannes  
Honorable John D. Schwartz

Myron M. Sheinfeld, Esquire  
Sheinfeld, Maley & Kay



## Acknowledgments

By Gerald K. Smith

The American College of Bankruptcy would like to acknowledge the following Fellows and firms without whose help our first educational session and dinner events would not have been possible. We would first like to thank Murray Drabkin for sponsoring the College events at the Cosmos Club. We also have John A. Barrett to thank for supporting the College at the Metropolitan Club.

Contributions of the Patrons and Sponsors listed below were instrumental in assisting the College in sponsoring the 1997 Spring educational and dinner events and we are grateful for their support.

### Patrons

Ernst & Young, L.L.P.  
- Los Angeles, California  
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- Chicago, Illinois  
Murphy, Weir & Butler  
- San Francisco, California  
Sheinfeld, Maley & Kay, P.C.  
- Houston, Texas  
Sheppard, Mullin, Richter & Hampton  
- Los Angeles, California

We hope that next year many more members of the College will participate to ease the financial burdens of the attendees at our 1998 annual meeting.



## Induction of Seventh Class

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to the Washington law firm of Wilmer, Cutler & Pickering since 1991. He was a partner in the firm from 1946 through 1979 and 1980 through 1990. In 1979-80 and again in 1994 he served as Counsel to the President of the United States. Has served as Special Counsel to the President on ratification of the SALT II Treaty from 1979 through 1980; President's Special Representative for Maritime Resource and Boundary Negotiations with Canada from 1977 through 1979; Senior Consultant, President's Commission on Strategic Forces (Scowcroft Commission), from 1983 through 1984; member of the Quadrennial Commission on Legislative, Executive and Judicial Salaries in 1985 and Chair in 1989; Member, President's Commission on Federal Ethics Law Reform in 1989; and

as consultant to Secretary Christopher and Ambassador Holbrooke during the Dayton negotiations in 1995.

He is also the recipient of the Jefferson Medal in Law at the University of Virginia in 1995. He was founder and later Co-Chair of the Lawyers Committee on Civil Rights under Law. He has served as Chair of the Board of the Salzburg Seminar, Co-Chair of the Committee on the Constitutional System, a member of the Council of the American Law Institute, a trustee of The Brookings Institution and a member of its Executive Committee; and he is an Honorary Bencher of the Middle Temple. He has also been a director of a number of national business corporations. He obtained his LL.B. in 1939 from Yale Law School and was awarded a Yale honorary degree as Doctor of Laws in 1983 and from Princeton University in 1994. ☞

## SAVE THE DATE Fall Meeting Information

*By Suzanne A. Bingham*

The College will hold its annual Fall Meeting on Thursday, October 16, 1997, at the Philadelphia Marriott Hotel, in conjunction with the meeting of the National Conference of Bankruptcy Judges. If you are registering to attend the NCBJ, your room reservations must be made through NCBJ. If you need NCBJ registration information, please contact Chris Molick, Executive Director, NCBJ, 235 Secret Cove, Lexington, S.C. 29072, or call her at 803/957-6225 or fax her at 803/957-8890. If you are not registering for the NCBJ, you may make a reservation through Philadelphia Marriott reservations at telephone number 800/320-5744.

### Thursday, October 16, 1997 Schedule

8:30 A.M. - 10:00 P.M.	Board of Directors Meeting
10:00 A.M. - 12:00 P.M.	Board of Regents Meeting
12:00 noon - 2:00 P.M.	All Fellows Luncheon
2:00 P.M. - 3:00 P.M.	Continued Board of Regents Meeting
2:15 P.M. - 4:15 P.M.	Committee Meetings

Executive Director, Suzanne Bingham, will forward to all Fellows information on the Fall Meeting of the College in early Summer.

## Focus Groups

*By Neal Batson*

At the All Fellows Meeting in Washington, D.C., on Saturday March 8, 1997, the Focus Groups that have been working with the National Bankruptcy Review Commission presented the results of the membership poll that had been conducted by the Focus Groups on several proposals that were being considered by the Commission.

At the October 1996 meeting of the College it was decided that the Focus Groups which had previously been formed in the Fall of 1995 should be revived for the purpose of considering certain proposals that are being considered by the National Bankruptcy Review Commission (the "Commission") Working Groups. The College Focus Groups (and their Chairs) which correspond to the Working Groups of the Commission are as follows:

- Focus Group 1** Ronald M. Martin  
- Mass Torts, Future Claims
- Focus Group 2** Gerald F. Munitz  
- Jurisdiction, Procedure & Transnational
- Focus Group 3** Isaac A. Scott, Jr.  
- Service, Ethics
- Focus Group 4** Raymond L. Shapiro  
- Chapter 11
- Focus Group 5** David T. Sykes  
- Government
- Focus Group 6** Richard S. Toder  
- Small Business, Partnerships, Single Asset Realty
- Focus Group 7** Jennie Deden Behles  
- Consumer Bankruptcy

During 1996 and the early part of 1997, the Focus Groups have been discussing the issues which are being considered by the Commission. Recently, the Focus Groups completed written reports of their deliberations. The results of the membership poll were announced at the March 8, 1997, meeting in Washington, D.C., and have been shared with the Commission. ☞



## New Officers

By Evelyn H. Biery

At the Board of Directors Meeting on Saturday, March 8, 1997, the following new officers were appointed:



(a) Raymond L. Shapiro, the new College Chair of the Board of Directors, is a partner in Blank Rome Comisky and McCauley in Philadelphia, Pennsylvania. He has been a Fellow and member of the Board of Directors of the College since 1992 and Vice President since 1995. He is a conferee of the National Bankruptcy Conference. He has edited the Dunlap Hannah Pennsylvania Forms and the Pennsylvania Civil Practice Handbook. He was admitted to the Pennsylvania Bar in 1960 after receiving his LL.B. in 1959 from Temple University School of Law.



(b) R. Neal Batson, the new College President, is a partner in and Chairman of the Management Committee of the Atlanta and Washington, D.C. law firm of Alston & Bird. Neal is also a Fellow in the American College of Trial Lawyers, a conferee of the National Bankruptcy Conference, a member of the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States, and a frequent lecturer on bankruptcy issues at ALI-ABA, New York University Law School and other programs.



(c) Barbara A. Everly, a new College Vice President, recently retired as the Clerk of the Court, United States Bankruptcy Court, Northern District of Iowa, in Cedar Rapids. She served on the faculty of the Federal Judicial Center from 1969 through 1986 and as an Advisor for the Bankruptcy

Division, Administrative Office of the United States Courts from 1967 through 1986. She has also served as the President of the National Conference of Bankruptcy Clerks, has been a Fellow since 1986 of the Institute for Court Management and is currently serving on the Board of Directors of the American Bankruptcy Institute.



(d) Mickey Sheinfeld, a new College Vice President, is counsel to the law firm of Sheinfeld, Maley & Kay P.C. in Houston. He recently served as adjunct professor of Law at the University of Michigan School of Law and earlier served as adjunct professor of Law at the University of Texas School of Law and the University of Houston States College of Law. He is a member of the Board of Editors of The Practical Lawyer and is a conferee of the National Bankruptcy Conference. He was admitted to the State Bar of Michigan in 1954 and the State Bar of Texas in 1956 after receiving his J.D. from the University of Michigan Law School in 1954.



(e) David T. Sykes, a new College Vice President, is the Managing Partner of Duane, Morris & Heckscher in Philadelphia. He has served the Philadelphia Bar Association as Chairman of its Business Law Section. He is a Cofounder and past Chairman of the Eastern District of Pennsylvania Bankruptcy Conference, and the organizer and first President of the Consumer Bankruptcy Assistance Project. He was admitted to the Pennsylvania Bar in 1965 after receiving his LL.B. from Temple University School of Law.



(f) Evelyn H. Biery, the new Secretary of the College, is the Head of the Bankruptcy, Reorganization and Creditors' Rights Department at Fulbright & Jaworski L.L.P., which includes attorneys in Houston, Dallas, Austin, San Antonio, New York, Washington D.C., London and Hong Kong. Evelyn has chaired the Bankruptcy Law Committee of the State Bar of Texas and also the Business Law Section of the State Bar of Texas. She was admitted to the Texas Bar in 1973, after receiving her J.D. from SMU Law School.



(g) Bettina M. Whyte, the new Treasurer of the College, is a principal in Jay Alix & Associates in New York. She serves on the Board of Directors of the Association of Insolvency Accountants and on the Governing Board of the Commercial Finance Association. From 1990 through 1997 she was a partner in Price Waterhouse LLP. She received an M.B.A. in Finance and Accounting from Northwestern University, where she was a Cunningham Scholar, and she received a B.S. in Industrial Economics from Purdue University, where she graduated Phi Beta Kappa.

The College extends its thanks to Margaret (Peggy) Sheneman for her past service as Treasurer of the College and to Hon. James J. Barta for his past service as Secretary. 🏛️



## New Directors

By Evelyn H. Biery

At the All Fellows Meeting in Washington, D.C., on March 8, 1997, Leonard H. Gilbert, Stuart E. Hertzberg, David A. Lander, Professor Grant Newton, Jerome Shulkin, Paul Singer, and Joel Zweibel were elected to three-year terms as directors of the College.



▲ Leonard H. Gilbert (a) Leonard H. Gilbert, a new College Director, is the Chairman of Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A., a firm with multiple offices throughout Florida and is located in the Tampa office. He served the College as a member of the Board of Regents until his appointment to the Board of Directors in 1997. He served as President of The Florida Bar and Chair of the General Practice Section of the American Bar Association and a member for ten years of its House of Delegates. He is active in the Insolvency Committee of the International Bar Association and the American College of Commercial Finance Lawyers. He was admitted to The Florida Bar in 1961 after receiving his LL.B. from Harvard University.



▲ Stuart E. Hertzberg (b) Stuart E. Hertzberg, a new College Director, is a partner in Pepper, Hamilton & Scheetz in Detroit, Michigan. He has served the Detroit Bar Association as the Chairman of the Creditors' Rights Committee from 1972 to 1980 and the American Bar Association as the Chairman of the Rules Subcommittee and the State Bar of Michigan as Chairman of the Committee on Debtor-Creditors Rights. He also served as President of the Commercial Law League of America from 1973 through 1974. He was admitted to the Michigan Bar in 1952 after receiving his J.D., with distinction, in 1951 from the University of Michigan Law School.



▲ David A. Lander (c) David A. Lander, a new College Director, is a partner in Thompson Coburn, St. Louis, Missouri. He was a member of the Joint ALI-NCCUSL Study Committee on Article Nine of the Uniform Commercial Code, and is a member of the American College of Commercial Finance Lawyers. He is an adjunct professor at St. Louis University Law School and was formerly Executive Director of Legal Services of Eastern Missouri. He was admitted to the Missouri Bar in 1969 after graduation from the University of Chicago Law School.



▲ Grant W. Newton (d) Grant W. Newton, a new College Director, is currently Professor of Accounting at Pepperdine University, Malibu, California. He was an Associate Professor of Accounting at the University of Bridgeport from 1966 through 1973 an Associate Professor of Accounting at the University of Alabama from 1973 through 1976 and a Professor of Accounting at California State University from 1976 to 1984. He has received awards for Alumnus of the Year from the University of North Alabama and was a faculty resident for Arthur Andersen & Co. He received his Ph.D. from New York University in 1974 and is a certified public accountant.



▲ Jerome Shulkin (e) Jerome Shulkin a new College Director, is President and Senior Shareholder of Shulkin Hutton Inc., P.S., in Seattle, Washington. He is a retired Colonel in the Judge Advocate General Corps. He is a Director and Vice President of the American Bankruptcy Board of Certification. He is a Fellow and Director of the American College of Bankruptcy. He has also served on the Board of

Advisors and as an Advisor to Norton Institute on Bankruptcy. He was admitted to the Washington Bar in 1956 after receiving his LL.B. from the University of Washington School of Law.



▲ Paul M. Singer (f) Paul M. Singer, a new College Director, is a partner in Reed Smith Shaw & McClay, in Pittsburgh, Pennsylvania, where he is Chair of the firm-wide insolvency practice. He served the Allegheny County Bar Association as President of the Bankruptcy and Commercial Law Section. In 1969 he was a Teaching and Research Assistant at The Graduate School of Industrial Administration of Carnegie Mellon University and he was with the American Express Company from 1971 to 1973. He was admitted to the Pennsylvania Bar in 1968 and in New York in 1972 after receiving his J.D. in 1968 from the University of Pittsburgh and his LL.M. from Harvard Law School in 1970.



▲ Joel B. Zweibel (g) Joel B. Zweibel, a new College Director, is a member of O'Melveny & Myers LLP in New York, where he serves as the co-chair of the firm's national Bankruptcy Department. He has served the Association of the Bar of the City of New York as chairman of the Committee on Bankruptcy and Corporate Reorganization and served the National Bankruptcy Conference as an officer and Chair of its Avoiding Powers Committee. He was admitted to the bar in New York in 1959 after receiving his LL.B. from Yale University in 1958.

The College extends its thanks to Hon. James J. Barta, Richard M. Gitlin, Hon. William L. Norton, Jr., Margaret (Peggy) Sheneman, and Ed Creel for their years of service as Board Members. ☞



## Report on Educational Program

By Leon S. Forman

The first educational program of the College, organized and moderated by College Scholar-in-Residence, Leon Forman, proved a resounding success as evidenced by much applause, laughter and a few friendly hisses and lighthearted boos. Three leading law professors, Professor Charles Mooney of the University of Pennsylvania Law School, Professor Elizabeth Warren of Harvard Law School, and Professor Lynn LoPucki of Cornell Law School addressed the questions presented by and to the Permanent Editorial Board of the UCC changed in Article 9.


- (a) a carve-out of a percentage of the assets of a debtor, such as 20%, for the unsecured creditors or perhaps just for tort creditors;
- (b) a super priority or super lien for tort creditors;
- (c) a nationwide filing system for recordation of security interests in personal property;
- (d) a requirement for filing financing statements only in the state of incorporation;
- (e) a concomitant requirement that a corporation add its state of incorporation as part of its name;
- (f) a standardized list of collateral categories; and
- (g) a requirement that secured creditors pay a portion of the administrative costs of reorganization and liquidation cases, and possibly postpetition interest for the unsecured creditors who lose value while reorganization or liquidation proceeds.

Then four leading bankruptcy practitioners, Harvey R. Miller of Weil, Gotshal & Manges; Leonard M. Rosen of Wachtell, Lipton, Rosen & Katz; and Bernard L. Shapiro of Murphy, Weir & Butler; and Professor Lawrence P. King, practicing attorney with Wachtell, Lipton, Rosen & Katz, and professor at New York University School of Law, discussed prepacked and prearranged plans, state and federal disclosure issues, bidding in a non-competitive environment. They discussed such issues as whether, if someone agrees in advance to vote for a particular

plan, that creditor might be bound or whether the bankruptcy court might allow a change in the vote if the disclosure statement provides different or additional information. They also discussed the bargaining power of classes of creditors and the frequent insistence of trade creditors that they will not ship to a debtor who leaves trade creditors unpaid.

Following a discussion of hot spots in financing and cash collateral orders, such as a possible requirement for a representation by the proponent that all Bankruptcy Code sections are satisfied and whether such a provision should be included in the Bankruptcy Code or in the Local Rules, the panel participants addressed the issue of whether Courts can add or delete creditors' committee members and described instances in which the Courts have done so or declined to do so. There followed a discussion of the participation by equity holders in negotiations and confirmation hearings when creditors argue that there is no value for equity and therefore no benefit for the reorganization process when equity remains in the negotiations and also a comment on cases in which postpetition default interest is being sought and challenged. Several panel members noted that, in most of the large cases these days, the manufacturing is done offshore and paid by a letter of credit so that the primary constituencies on creditors' committees are now financial institutions rather than trade creditors.

Mickey Sheinfeld of Sheinfeld, Maley & Kay moderated a program in which Honorable Lisa Hill Fenning, Honorable Paul Mannes, and Honorable John D. Schwartz discussed the perspective of the Bench on bankruptcy practice and lawyers.

The educational program was an excellent, high-level discussion of complicated issues by experienced professors and practitioners to an experienced and sophisticated audience. In many ways, it was unique in the depth and precision of the treatment of the topics. The future educational programs of the College will be equally as sophisticated and beneficial, and we recommend them to all Fellows. 

## Directory Updates

By Suzanne A. Bingham

The following revisions and corrections to the College Directory (Fourth Edition) have been provided to Suzanne Bingham through May 12, 1997. If you have additional revisions or corrections for the directory, please forward them to Suzanne Bingham.

### Directory change of addresses.

Eric D. Bruce  
Bruce, Bruce & Hozt, L.L.C.  
P. O. Box 75037  
Wichita, Kansas 67275-5037

Joseph E. Friend  
Breazeale, Sachse & Wilson  
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New Orleans, Louisiana 70112  
Telephone: 504/584-5454  
Facsimile: 504/584-5452

Hon. Ray Reynolds Graves  
United States Bankruptcy Court  
Eastern District of Michigan  
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Detroit, Michigan 48226  
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Walter O'Cheskey  
Walter O'Cheskey & Associates  
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Lubbock, Texas 79424

Arnold M. Quittner  
Pachulski, Stang, Ziehl & Young  
10100 Santa Monica Blvd., Ste. 1100  
Los Angeles, California 90067-4102  
Telephone: 310/277-6910

Bettina M. Whyte  
Jay Alix & Associates  
575 Fifth Avenue, 21st Floor  
New York, New York 10017  
Telephone: 212/297-6309  
Facsimile: 212/490-1344

Name Change:  
Hon. Prudence Carter Beatty





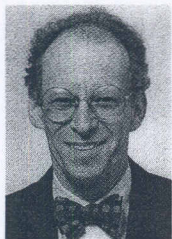
## New Regents

By Evelyn H. Biery

The following new Regents have been appointed to represent the College:



▲ Richard S. Toder (a) Richard S. Toder, new Regent for the Second Circuit, is a partner in Zalkin, Rodin & Goodman in New York. He served as Assistant United States Attorney for the Southern District of New York from 1968 through 1972. He is affiliated with the National Bankruptcy Conference and the New York City Bar Association, where he serves on the Committee on Bankruptcy and Corporate Reorganization. He was admitted to the New York Bar in 1965 after receiving his J.D. from Harvard Law School.



▲ Michael L. Temin (b) Michael L. Temin, new Regent for the Third Circuit, is a Partner in Wolf, Block, Schorr & Solis-Cohen in Philadelphia, Pennsylvania. He has served as an Adjunct Professor and Lecturer at the University of Pennsylvania Law School. He also served as chairman of the Eastern District of Pennsylvania Bankruptcy Conference and as chairman of the Section of Corporation, Banking and Business Law for the Philadelphia Bar Association. He also served as chairman of the Rules Committee for the American Bar Association. He was admitted to the Pennsylvania Bar in 1957 after receiving his LL.B. from the University of Pennsylvania Law School.



▲ Joel P. Kay (c) Joel P. Kay, new Regent for the Fifth Circuit, of Sheinfeld, Maley & Kay, P.C. He was with the United States Department of Justice, Tax Division, from 1963 through 1967 and served as an Assistant United States Attorney for the Southern District of Texas from 1967 through 1969. He served the State Bar of

Texas as a Director from 1979 to 1982 and as Chairman of the Board for the State Bar from 1982 through 1983. He was admitted to the Texas Bar in 1961 after receiving his J.D. from the University of Texas School of Law, and he received his LL.M. in tax in 1967 from Georgetown University.



▲ David G. Heiman (d) David G. Heiman, new Regent for the Sixth Circuit, is a Partner in Jones, Day, Reavis & Pogue in Cleveland, Ohio. He serves as Chair of the Bankruptcy/Commercial Law Section, Corporate Group, of the Firm and has also served the American Bar Association as the Chair of the Commercial Financial Services Committee of the Section of Business Law. He received the Young Leadership Award from the American Jewish Committee. He was admitted to the Ohio Bar in 1970 after receiving his J.D. from the University of Cincinnati Law School.



▲ Hon. Mary Davies Scott (e) Hon. Mary Davies Scott, new Regent for the Eighth Circuit, is a United States Bankruptcy Judge for the Eastern and Western Districts of Arkansas, residing in Little Rock, Arkansas. She served as Assistant Attorney General for the State of Arkansas from 1979 through 1981 and as Assistant United States Attorney for the Eastern District of Arkansas from 1986 through 1987. She is presently an Adjunct Professor of Law at the University of Arkansas. She was admitted to the Arkansas Bar in 1978 after receiving her J.D. from the University of Arkansas School of Law.



▲ Robert B. Rubin (f) Robert B. Rubin, new Regent for the Eleventh Circuit, is a partner in Burr & Forman in Birmingham, Alabama. He has served as an Adjunct Professor at the

Cumberland School of Law at Samford University. He also chaired the Bankruptcy and Commercial Law Section of the Alabama State Bar. He was admitted to the Alabama Bar in 1965 after receiving his LL.B. from Vanderbilt University School of Law.



▲ Susan M. Freeman (g) Susan M. Freeman, a new Regent at Large, is a partner in Lewis and Roca, LLP, Phoenix, Arizona. She serves the American Bar Association as Chair of the Bankruptcy Ethics Subcommittee of the Business Bankruptcy Section, has been a faculty member since 1988 of the Norton Institutes on Bankruptcy Law, and authored Chapter 27 of Norton Bankruptcy Law and Practice, on bankruptcy ethics. She was admitted to the New York Bar in 1975 after receiving her J.D. from New York University School of Law.



▲ William J. Perlstein (h) William J. Perlstein, a new Regent at Large, is a managing partner in Wilmer, Cutler & Pickering in Washington, D.C. He has served the American Bar Association as the chair of Legislation Subcommittee of the Business Bankruptcy Committee, and he served as law clerk to The Honorable Marvin E. Frankel, United States District Court for the Southern District of New York. He was admitted to the bar in Washington, D.C. after receiving his J.D. from Yale Law School in 1974. He will also serve as Counsel to the College.

Vernon O. Teofan, who previously served as Regent for the Fifth Circuit, now serves as a Regent at Large. ☐





▲ Prof. Larry King with National Bankruptcy Review Commission staff members attending the College banquet where he was presented the College Distinguished Service Award

## SAVE THE DATE 1998 Induction Ceremony and Events

*By Suzanne A. Bingham*

The 1998 Induction Ceremony for the Ninth College Class has been scheduled for March 13-14, 1998, in Washington, D.C. The Great Hall of the Supreme Court has been reserved for Friday, March 13 for the black tie induction event. We are changing the format this year. The Board of Directors and the Committee meetings will be held during the day on Friday, March 13. The educational program will be held on the morning of Saturday, March 14, followed by a keynote luncheon. The afternoon will be free, and the College will host a banquet on Saturday evening. Make your arrangements to arrive either Thursday, March 12, or the morning of March 13. A block of rooms has been reserved again at the Madison Hotel in Washington, D.C.

### Friday, March 13, 1998

*Cosmos Club, Washington, D.C.*

9:00 - 4:00 P.M.

College Meeting  
All Fellows Meeting

### Saturday, March 14, 1998

*Cosmos Club, Washington D.C.*

9:00 - 2:30 P.M.

Educational Program and luncheon

7:00 P.M.

Banquet (Metropolitan Club)

## Nomination Process and Deadlines for 1998 Nominees

*By Merrill Francis*

In mid June, 1997, Merrill R. Francis, Chair of the Board of Regents, will write to each Fellow requesting nominations, together with biographical information be forwarded to each Circuit Admissions council by July 31, 1997. Nominations for judges should be forwarded to Leonard Gilbert, and nominations for Foreign Fellows should be forwarded to John A. Barrett. Thereafter, each Circuit Admissions Council will review nominations received for that Circuit and begin the process of making recommendations to the Board of Regents. Each Fellow within a Circuit will receive the names of the proposed Fellows in that Circuit and be asked to comment on each proposed Fellow. Final Circuit Admissions Council recommendations will be forwarded to the Board of Regents, who will meet on Thursday, October 16, 1997, in Philadelphia in conjunction with the meeting of the National Conference of Bankruptcy Judges. Invitations to new Fellows for the Class of 1998 will be sent out in mid November, 1997. ☞





## Distinguished Service Award

By Leon S. Forman



▲ Lawrence P. King

The American College of Bankruptcy Distinguished Service Award recognizes a person or entity who has made an outstanding contribution to the national or international insolvency and bankruptcy community. Fellows of the College are preferred, but recipients of the award are not limited to Fellows.

The Chair of the Board of Directors of the College appoints a Selection Committee which reviews potential nominees annually to see if one should be selected for such recognition. If there is one so nominated, the Board of Directors decides whether to present the award. The criteria for the award include (i) significant accomplishments in improving the administration of justice in insolvency; (ii) distinguished service consistently rendered over a period of time or in a single outstanding achievement within the year; and (iii) accomplishments that arise voluntarily rather than as a result of professional services for fee in the case of private lawyers. The accomplishments or contributions of the recipient must be consistent with the goals and purposes of the College.

This year the College presented the award to Professor Lawrence P. King with the following statement by Leon S. Forman:

"As Chairman of the Selection Committee for the 1997 Distinguished Service Award, I have the honor tonight of presenting the Award. The Committee was composed of the Honorable Conrad Cyr of the First Circuit Court of Appeals, the eminent attorney of Houston, Texas, John Barrett and myself. We looked at the criteria for the Award, as created by the College, and the controlling test was the achievement of significant accomplishments and the rendering of unique service in the bankruptcy field over a period of time. We concluded unanimously that the selection this year was a "no brainer" and the Board of Directors agreed.

"Professor Lawrence P. King of New

York University School of Law has no peers in bankruptcy. His impact in the field of bankruptcy has been hugely pervasive.

"He has been editor-in-chief of Collier on Bankruptcy for such a long time that it is now cited as "King's Collier on Bankruptcy" and no lawyer, teacher, student, scholar or Court confronts a bankruptcy problem without finding out first what Collier, or I should say, King has said.

"As a brilliant teacher at New York University, he has prepared for their careers many lawyers practicing today, as well as students who have become teachers.

"He was a consultant to the First Commission on Bankruptcy Laws in the early 1970's and now is an important advisor to the current National Bankruptcy Review Commission.

"He was a reporter to the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States from 1968 until he became a member of the Committee itself in 1983 and remained a member until 1992.

"He has done outstanding work and provided critical leadership for the National Bankruptcy Conference for many years and is now serving as Vice Chairman.

"Some know him best as the creator, planner and director of the NYU

Seligson Bankruptcy Workshop, which has been conducted usually the last week of August, for the past 22 years and is one of the most respected programs in Continuing Legal Education.

"I could go on much longer for he has authored much read and used case books, text books, and Law Review articles beyond measure and has participated in Continuing Legal Education programs as lecturer and panelist under the auspices of many educational providers in every region of the country.

"His contribution to the improvement of the bankruptcy law is not just substantial, it is everywhere you turn around. What is so wonderful about this great teacher and scholar is that he always makes himself available for a worthwhile project associated with the field of bankruptcy. And with it all, he has no pretensions. Larry, as he is affectionately known to about everyone, is a regular down-to-earth guy, gracious, but a tough competitor in any debate. I might add that the best place to find out about his competitive spirit is on the golf course or tennis court. The golf course is one of the few places I can keep up with him, probably because I have been doing it longer.

"Larry, as a friend of close to 35 years, it is particularly a privilege and honor for me to present to you on behalf of the American College of Bankruptcy, its 1997 Distinguished Service Award." 🏆

## Committee Chairs

By Raymond L. Shapiro

If you would like to volunteer to serve on any of the Committees of the College, you may contact the Committee Chairs, who are the following:

Bankruptcy History Committee	John Pearson
National Bankruptcy Review Commission Project Steering Committee	Neal Batson and Gerald Smith
Education and Annual Event Committee	Leon Forman
On Line Committee	Ron Martin
Publications Committee	Evelyn Biery
Pro Bono Committee	David Sykes
Legal Committee	William J. Perlstein
College Directory	Joel B. Piassick

Additional committees are being formed.



# 1997 Induction Ceremony and Events March 7-8, 1997



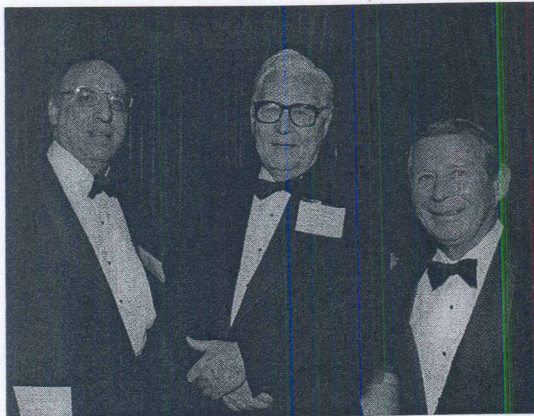
▲ Jerry Smith and Lloyd Cutler speaking following Induction Ceremony



▲ College Officers lining up, Raymond Shapiro, Peggy Sheneman, Merrill R. Francis and Leon Forman, shown here



▲ Ed Creel giving the Induction Welcome



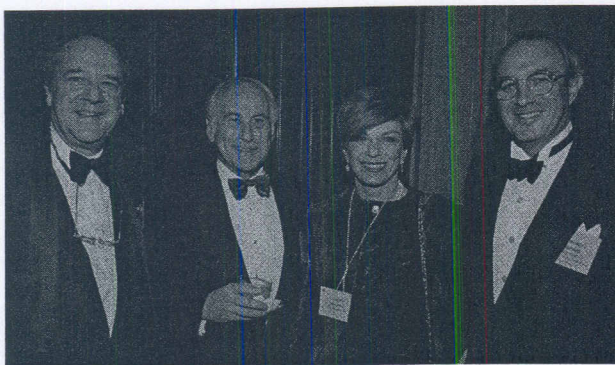
▲ George Weisz, Bill Norton, Jr. and Jerry Smith enjoying the Induction Ceremony



▲ Fellows listening to College Education Programs



▲ Suzanne Bingham, Executive Director, and Associate Justice Scalia attending Supreme Court Reception



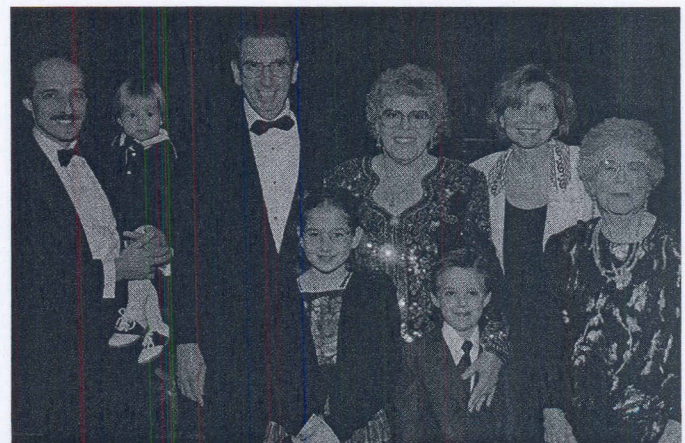
▲ David Sykes, Joel Piassick, Judy Shapiro and Ray Shapiro attending Supreme Court Reception



▲ Education program panel including new inductees Barney Shapiro, Harvey Miller, Leonard Rosen and Fellow Moderator Prof. Larry King



▲ Prof. Larry King and Brady Williamson giving a National Bankruptcy Review Commission update



▲ The Jules Cohen family enjoying the College event as a family



## In Memory of Calvin K. Ashland Former Chief Bankruptcy Judge

By Merrill R. Francis

The Honorable Calvin K. Ashland, of the United States Bankruptcy Court for the Central District of California, died in early April, 1997, following a stroke. Judge Ashland was appointed as a bankruptcy judge in 1976, served as Chief Judge of the Central District from 1991-1996, and served on the Bankruptcy Appellate Panel from 1982-1996. As Chief Judge, Judge Ashland led the Central District in developing the District's Long Range Plan, implement-

ing new case management and other automated systems, securing additional bankruptcy judgeships for the Central district (now 21), and establishing new divisional offices in Santa Barbara and the San Fernando Valley. In addition to his leadership role as Chief Judge, Judge Ashland was known for his judicial temperament, integrity, and instinct for justice. "Cal" will be missed by his many friends. Judge Ashland is survived by his wife of 39 years, Ilse Ashland.

## Publications Committee Report

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Bankruptcy Review Commission staff attorneys, and we will request that the Fellows present directly to the Bankruptcy Review Commission staff attorneys any comments and thoughts they may have.

- (f) We will also submit to the College Fellows reprints of the article that Jerry Smith is preparing for *South Carolina Law Review*.

My thanks to the Publications Committee members who attended the meeting in March. We welcome new members to the Publications Committee, and I thank those who have previously contributed. ¶

## Thanks to Suzanne Bingham

By Gerald K. Smith

The College extends its grateful appreciation to Suzanne Bingham and her staff for ably shepherding us through our two-day meeting in Washington, D.C. on March 7 and 8, 1997. Our attendance neared 300 for the induction ceremony, 140 for the educational program and 190 for the dinner meeting. This is the first time that the College conducted a stand-alone program of this magnitude, and we congratulate Suzanne and her staff for their magnificent effort to keep us well organized and make our meeting a great success. ¶

## Board of Directors Meeting

By Evelyn H. Biery

A meeting of the Board of Directors of the College was conducted on Saturday, March 8, 1997, at the Cosmos Club in Washington, D.C.

On motion by Ray Shapiro, seconded by Lou Levit, the Board unanimously approved a proposal under which any officer of the College, if not already elected a member of the Board, would become a member of the Board and a majority of the elected Board would be required for taking action on behalf of the College.

There followed a discussion of a proposal by Ron Martin, on-line committee chair, for an intranet system under which the College and its members would be able to distribute, collect and communicate information among its members through E-office intranet. No Board action was requested or taken. There followed a discussion of the induction and educational programs. No Board action was requested or taken.

The minutes of the meeting October 16, 1996, were unanimously approved as submitted.

There being no further business, the meeting adjourned. ¶



## All Fellows Meeting

continued from page 2

the attorney for the debtor. There has been an idea suggested that it would be better to define an adverse interest or a materially adverse interest. The Committee has looked at the work of the American Law Institute. The Committee has been preparing to consider a definition in Section 327 of conflict of interest, although there has as yet been no move to change the rules on disclosure. If there were to be a redefinition of adverse interest, the disclosure rule would still not be changed. The working group is also considering national admission of bankruptcy attorneys. There has also been a discussion of professional compensation, directed toward an attempt to spell out what flexibility the Court has regarding disclosure. There is already a lot of flexibility, so added flexibility may not be needed according to the working group. There may be a proposal barring fee examiners. There has also been a suggestion by an ABA committee for a referral fee to referring attorneys. There has not been an adverse reaction from the Committee, but there has been one letter from a trustee challenging the idea of a referral fee to referring attorneys. There are three proposals from the Chapter 11 Committee, including

- (a) an absolute priority to permit the so-called new value exception but terminating exclusivity if new value is part of a proposed plan;
- (b) classification of similar claims in separate classes under certain circumstances; and
- (c) court review of committee appointments.

Other areas include the following:

- (a) sales free and clear;
- (b) postconfirmation jurisdiction;
- (c) executory contracts;
- (d) partners and partnerships;
- (e) future claims;
- (f) small business proposals;
- (g) consumer proposals; and
- (h) tax issues.

There has also been a discussion of a possible set of uniform national exemptions with defined floors and ceilings. The materials provided to the attendees included the Committee Progress Report through March 5, 1997, showing the concepts and the current versions of certain proposals. ¶