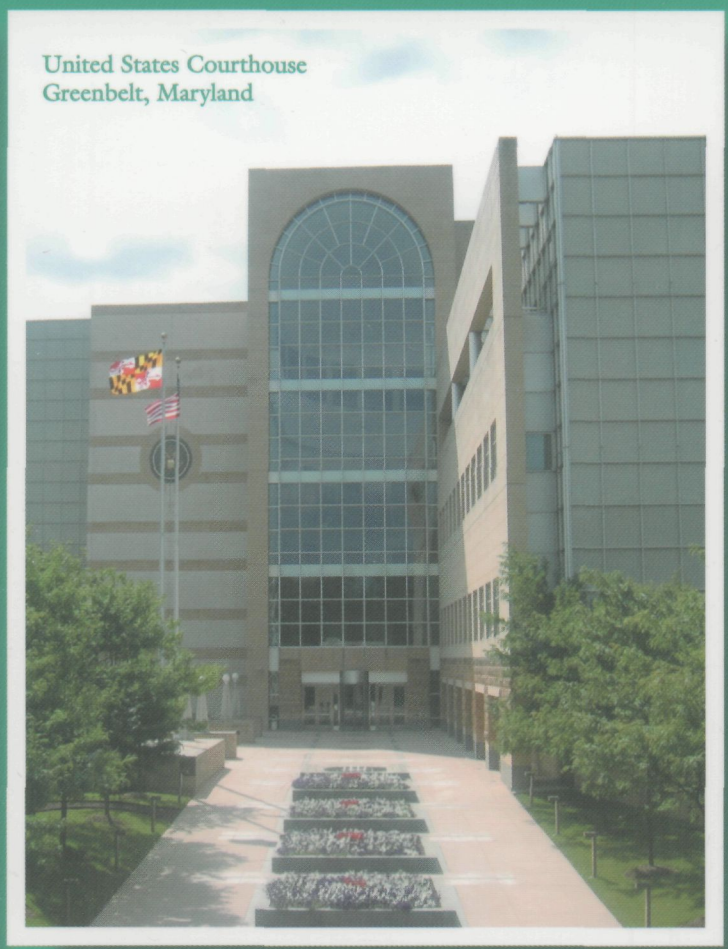
THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF MARYLAND

United States Courthouse
Baltimore, Maryland



United States Courthouse
Greenbelt, Maryland

CELEBRATING 25 YEARS • 1979-2004

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Special thanks to **Ronald J. Drescher, Esquire** for his innovative and entertaining 25th anniversary video presentation of *Tales by Members of the Bankruptcy Bench and Bar*, presented at the Spring Break Weekend, May 7, 2004.

WORTHY *of* REMEMBRANCE:

PERSONALITIES, CASES AND TALES FROM THE FIRST 25 YEARS OF THE UNITED STATES BANKRUPTCY COURT *for the* DISTRICT OF MARYLAND *1979-2004*

Covering the period from the enactment of the
Bankruptcy Reform Act of 1978 down to the present,
including historical information regarding insolvency practice
in Maryland before the advent of the Bankruptcy Code.

General Editor: Chief Judge James F. Schneider

Presented by The Daily Record
On behalf of
The Bankruptcy Bar Association
of the
District of Maryland

October 2004

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Introduction

BY JUDGES MANNES, SCHNEIDER, DERBY, KEIR AND ALQUIST

Judges of the U.S. Bankruptcy Court for the District of Maryland, 2004 (Front row, L-R: Chief Judge James F. Schneider, Chief Judge Emeritus Paul Mannes. Second row, L-R: Judges E. Stephen Derby, Duncan W. Keir and Nancy V. Alquist.

This retrospective is a celebration of the people, events and cases from the first 25 years of the United States Bankruptcy Court for the District of Maryland. Our history technically began on Monday, October 1, 1979, but this collection of names, places, dates, stories and anecdotes actually goes back to July 1, 1898, the effective date of the Old Bankruptcy Act, when bankruptcy practice was a basic part of the jurisprudence of the United States District Courts.

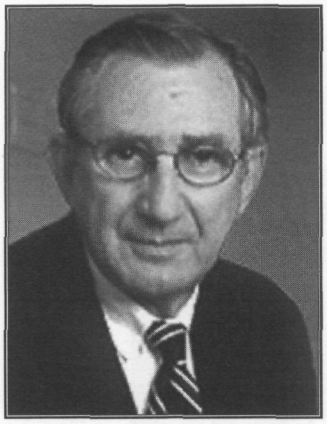
We wish to thank the Bankruptcy Bar Association for the District of Maryland for undertaking this project, to preserve our history and to recognize the importance to the American people of the institution of bankruptcy in fostering economic justice and the financial freedom of individuals and businesses in this Country. We also wish to express our gratitude to the Attorney Admission Fund Committee of the United States District Court for the District of Maryland for its generosity in underwriting the costs of this project.

It is our hope that this celebration of bankruptcy practice will be an inspiration to the Bar, as well as provide an education to the Public, regarding this essential branch of American law.

Reflections

BY HOWARD A. RUBENSTEIN, DEAN OF THE BANKRUPTCY BAR

When we gathered together to dedicate Judge Schneider's court room, I was called to the podium. Judge Mannes introduced me as the "Dean of the Bankruptcy Bar." When I asked him whether that was because I was the oldest member of the Bankruptcy Bar, he replied, "Certainly!"



Howard A. Rubenstein

I first saw a bankruptcy courtroom in 1950. I had just graduated from high school and began pre-law several days thereafter. I went to the University of Baltimore at night and was a clerk during the day for Louis Sagner, whose office specialized in collections, bankruptcy and insolvency. During the next few years whenever I would file pleadings at the clerk's office, I would sit quietly in the last row of the courtroom listening to cases before Bankruptcy Referee J. Martin McDonough. The court at that time was located on the third floor of the United States Court House and Post Office building. The clerk's office was next door. At that time there was one clerk, Miss Helen, who terrified law clerks and lawyers alike. In 1955, I became a member of the bar and by that time the clerk's office staff had doubled in size with the arrival of Miss Daisy.

In the 1950's there were only three firms in Maryland that specialized in collections bankruptcy and insolvency. The entire bankruptcy bar totaled 14. No large firms had bankruptcy departments. Some second generational groups from those firms include Steve Fruin, Ed Goldberg and Howard Heneson. In 1950, there was no bar association. Today we have over 300 members of the Bankruptcy Bar Association for the entire state. In 1950 there was one clerk. Today the administrative staff totals 129. In 1950 there was one referee. Today we have five bankruptcy judges. I recollect that in 1950 there were less than 1000 cases filed during the year. Last year there were 33,941 cases filed. In the 1950's, very few cases were filed where claims of creditors were in excess of $1-$2 million. The volume of cases in Maryland rapidly increased. For a period of time, the large cases were being filed in states other than Maryland.Today our bankruptcy courts now administer these mega cases.

During the early 60's, a commission was appointed by the President to review the existing Bankruptcy Court system. That commission had a 5 year appointment. Bankruptcy practitioners at that time were hopeful that a new bankruptcy act would be enacted within that 5 year span. Everyone saw the need to overhaul the antiquated Bankruptcy Act of 1898 which was patched up every several years by amending the Act or creating rules to address various issues. The Bankruptcy Code was finally enacted in 1978, effective on October 1, 1979. The Code completely changed the practice. The "fresh start" promised Debtors the slate would be wiped clean. Large food chains, railroads, steel companies blazed the trail to obtain their fresh starts. No longer were businesses and individuals concerned over the stigma of a bankruptcy. Their rehabilitation preserved jobs and contributed to the growing economy.

I was drawn to the bankruptcy practice while still in law school. Forty-nine years after being admitted to the bar, I am still attracted by it. I have never regretted restricting my practice to bankruptcy and insolvency. I knew that when I accepted the job of a law clerk for Louis Sagner that I had found an area of practice that was vibrant and exciting and intellectually stimulating. What other type of practice could have given me the excitement of being a CEO of an airline for 11 days; to have a football coach for an NFL team explain the methodology of the draft; to spend time working in London and Rome? The practice gave me an opportunity to meet and work with the icons of the Bankruptcy Bar, such as Harris Levin, Harvey Miller, Professors Charles Seligson and Lawrence King. The volume of cases during the 70's and 80's was still small enough to enable the small bankruptcy boutique firms to survive despite the expansion of the insolvency departments of the larger firms. In many of the smaller cities around the country there were few

"What other type of practice could have given me the excitement of being a CEO of an airline for 11 days ..."

Howard A. Rubenstein

or no bankruptcy practitioners requiring me to keep a suitcase in my trunk ready to fly to the next case. Today we do not even have to leave our desks to file pleadings. E-mail has taken away the one-to-one relationship with clerks. No more is a law clerk going to sit in the back of a courtroom after the filing of a pleading and still maintain his or her billing hour requirement. Oh, where did our small bankruptcy court go?

I have found over the period of years that the comradery between bankruptcy lawyers is to be admired and enjoyed. We are fortunate during the last 25 years to have outstanding Bankruptcy Judges. We also have a community of lawyers who exhibit the comradery and collegiality that make this practice strong and vibrant. I personally thank the bench and bar for their friendship and cordiality during the last 49 years.

P.S. I hope the time line created in this recollection will finally resolve David Rice's questioning as to my presence and participation in the drafting of the Bankruptcy Act of 1898.

The Evening Sun

BALTIMORE, WEDNESDAY, APRIL 15, 1987 25 CENTS

A FRESH START

Bankruptcy jumps 31% among debtors here

By Michael Wentzel
Evening Sun Staff

The number of bankruptcies filed in federal court in Maryland increased by 31.1 percent last year, as more than 6,000 individuals and businesses sought a fresh start.

Lawyers and business experts familiar with bankruptcies blamed the large increase, in part, on easy ac-

■ Magic theater may vanish A12

cess to credit cards and a mismanaged spending binge by consumers.

"We have people with champagne tastes, a beer income and too many plastic cards," said John Robinson, a trustee who specializes in Chapter 13 cases that allow people to pay off their debts on a regular schedule while keeping their property and assets.

Many of those who deal with bankruptcies daily said they had no single explanation for the booming volume of filings.

"The nation may be in an economic upswing but there is still a recession in bankruptcy court," said federal bankruptcy Judge James F. Schneider. "I really don't know why it is happening."

Michael Kostishak, clerk of the Maryland bankruptcy court, acknowledged "the numbers are higher than during the recession of 1981." But, he said "no one knows if that

By Patrick Sandor — Evening Sun Staff

ATTORNEY RUBENSTEIN: "The limits on credit cards are exaggerated . . . At some point, people run out of money."

People's finances came down like house of cards

By Michael Wentzel
Evening Sun Staff

The young mechanic and his wife used credit cards with the abandon of addicts, charging household items, presents and even the weekly groceries with little attention to the red ink on the bottom line.

When they needed cash, they used a credit card. When a bill on one credit card came due, they borrowed from another card to pay the bill. When they reached the maximum limit on a card, the credit card company sent

Although both worked — the mechanic even had a second job — they filed for bankruptcy last year. They had 14 credit cards carrying a debt of about $13,500. They owed $14,000 on a car and they were behind on mortgage payments on their house.

The young mechanic and his wife — with an annual household income of about $30,000 — did not have a dime in the bank.

"I guess I didn't really know how to handle my money," says the mechanic, who, like all those interviewed, asked that his name

and sitting it in front of him. That baby's going to eat it."

"I know we asked for it, but no one ever turned us down," he said.

Heavy credit card debt, high interest rates and a lack of money management overwhelmed the mechanic's family, which was typical of many of the non-business bankruptcies examined at random by *The Evening Sun* in Maryland's federal court.

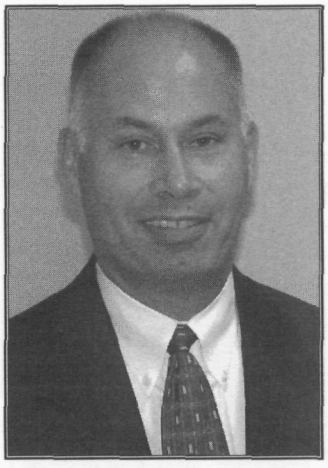
But the bankruptcy files yield a variety of financial and personal dramas

Foreword

BY MARK D. SAMMONS, CLERK OF COURT

The greatest innovation in the Bankruptcy Court's 25-year history has been the development of automated tools to assist with the administration of bankruptcy cases.

Judge Harvey M. Lebowitz took office on June 1, 1979, hired Michael Kostishak as the first Clerk of Court, organized the Clerk's office and recruited a panel of Chapter 7 trustees. Judge Glenn J. Goldburn had been sitting as a part-time Bankruptcy Judge in Hyattsville since 1972.



Mark D. Sammons, Clerk of Court

On October 1, 1979, the Clerk's office opened its doors in two locations, with a total staff of 20 deputy clerks. In Baltimore, the office was located on the second floor of the Garmatz Courthouse where former Judge Joseph O. Kaiser and his staff had been since 1976, when the U.S. District Court moved from its prior location at Calvert and Fayette Streets. In Hyattsville, the office was located in leased space in the Prince George's Plaza Center, an office building at 6525 Belcrest Road.

That first year, Judges Lebowitz and Goldburn presided over 2,100 cases. The staff of the Clerk's office used memory typewriters to maintain paper docket sheets on each case. Metal carts containing the docket sheets rested by the docket clerk's work areas. Notices were prepared using a mimeograph machine and labels were prepared and applied to envelopes by hand. Notices to a large number of creditors would be a team effort and were processed using temperamental machinery that would fold, insert and seal the envelopes.

In 1981, the Southern Division of the Court relocated to Rockville to leased space in an office building at 451 Hungerford Drive.

In 1986, the first personal computer, an IBM AT arrived at the Clerk's office. The staff which totaled 39, recorded basic statistical data on each case on this stand-alone system and still maintained the docket sheets manually via typewriters. In 1987, the first networked personal computers were installed to assist with case opening, using a program developed by an Assistant Circuit Executive to the U. S. Court of Appeals for the Eleventh Circuit.

By 1990, the Court had grown to a staff of 52, with a caseload of 8,201 new cases per year. An automated system known as NIBS, short for "National Interim Bankruptcy System," was used by staff to maintain docket sheets and case information. In 1992, the early version of BANCAP ("Bankruptcy Applications Program") arrived. Although BANCAP was more robust for docketing compared to NIBS, it was difficult to enhance and maintain.

In October 1994, the Southern Division relocated from Rockville to the newly-completed Greenbelt Federal Courthouse on Cherrywood Lane. In 1997, new cases exceeded 30,000 for the first time. In that year began the transformation of the 97 members of the Clerk's office from a group of individual docket clerks to a team-based organization made up of case administrators who managed all matters for all chapters. This retooling effort required extensive training and redesign of work space and was engineered to improve customer service and quality of work. In 1998, new cases passed 35,000 for the year. By 2000, planning began for the next generation of automated tools, CM/ECF ("Case Management/Electronic Case Filing"). Since "going live" with electronic filing in April 2003, there are now approximately 49% of pleadings and 79% of new cases docketed by attorneys via the Internet.

Over the past 25 years, the U.S. Bankruptcy Court has become extremely dependent on the efficiency of automated systems and has been fortunate to have many talented and dedicated staff who have responded to the needs of the bench and public with innovation and enthusiasm. With austere budgets of the future looming ahead, this entrepreneurial spirit and drive for improvement will continue to be needed in order for the Office of the U.S. Bankruptcy Clerk to provide the services that remain essential to the bench, the bar and the public.

On behalf of the hundreds of deputy clerks who have served in the Clerk's office over the last 25 years, we are proud to be able to serve the citizens of Maryland by achieving our mission:

"The primary reason our Court exists is to promote social and economic order by reconciling the opportunity of debtors to a fresh start with the right of creditors to be paid."

A Brief History of Bankruptcy

BY EDMUND A. GOLDBERG

Once upon a time in this country there was imprisonment for debt. This always seemed to be somewhat self defeating. Imagine how many jails they'd have to build these days! But in the early days of the Bankruptcy Code, in chambers on the second floor of the Garmatz Courthouse, there was a closet that then-law clerk David Rice denominated the "Bankruptcy Jail." Anyone who ever spent any time in this closet soon came out of it and signed reaffirmation agreements without hesitation.

Other societies had different sanctions for nonpayment. For example, Britons who didn't pay the *danegeld* tax to keep the Vikings away would have their nostrils slit – and *not* by the Vikings. This penalty gave rise to the expression, "Paying through the nose". Today, of course, you pay through the nose to *see* the Vikings. In ancient China, there was a custom whereby a creditor would commit suicide on the debtor's doorstep so he could pursue him in the afterlife. (This assumes that they were going to the same place, but also gave rise to the expression, "execution on a judgment.") In Roman times, the Laws of the Twelve Tables contained a provision "*de debitore in partes secando, bada boom bada bing*" which authorized creditors to dismember the debtor and hold the body parts for ransom by the debtor's relatives. Mark Neal says that this was the world's first-known pro-rata distribution.

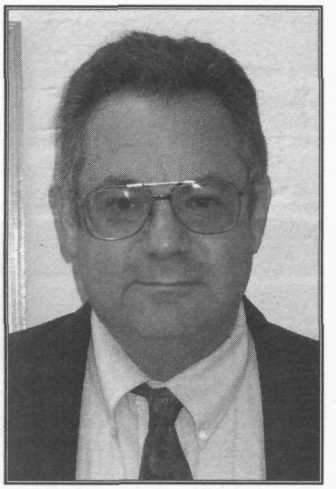
But in America, creditors saw that inability to pay debts was not–in and of itself–criminal. They asked Congress to give them a bankruptcy law. The first exercise of Congressional authority under Article I, Section 8, clause 4 was the short-lived Bankruptcy Act of 1801, passed to deal with a financial panic. It lasted one year. And there are seven *sub curias* still pending. The year after the law was repealed, the United States purchased the Louisiana Territory from France for four cents an acre, a bankruptcy price if there ever was one. A. J. Billig did the sale. It was a sale free and clear of New Orleans.

Bankruptcy acts were passed a couple more times, always in response to financial crises and always repealed when the crises passed. In response to the Panic of 1837, Congress acted with its traditional speed in response to crisis, and passed the Bankruptcy Act of 1841. Abraham Lincoln and his partner Stephen T. Logan handled bankruptcy cases during the brief time this Act was in effect.

In 1861, Region Four seceded, except for West Virginia and Maryland. Lincoln, just inaugurated as the 16th President, ordered troops to Federal Hill and had cannon trained on City Hall. The prospect of crab cakes going over to the Confederacy justified the imposition of martial law. A Confederate spy was caught trying to smuggle the formula for Old Bay seasoning. The present paragraph has absolutely nothing to do with why we are here today, and should be disregarded.

Then Congress enacted the Bankruptcy Act of 1898. This law was made to last. It survived from the charge up San Juan Hill to the Big Broadcast of 1938 when it was substantively amended by the Chandler Act. The people in charge of bankruptcy cases were called "referees," and had their own Salary-and-Expense Fund. But they had to pay for their own whistles.

When the Chandler Act was passed, the country had already been in the Great Depression for over eight years. Unemployment was around 25%. In Baltimore, you took the bar exam in the Fish Market in summertime. You learned to write fast.



Edmund A. Goldberg

Under the Bankruptcy Act, the referee conducted the first meeting of creditors, and appointed a trustee, if creditors didn't elect one. In Baltimore, I got to serve as trustee in the last cases filed under the Act. Lucky me.

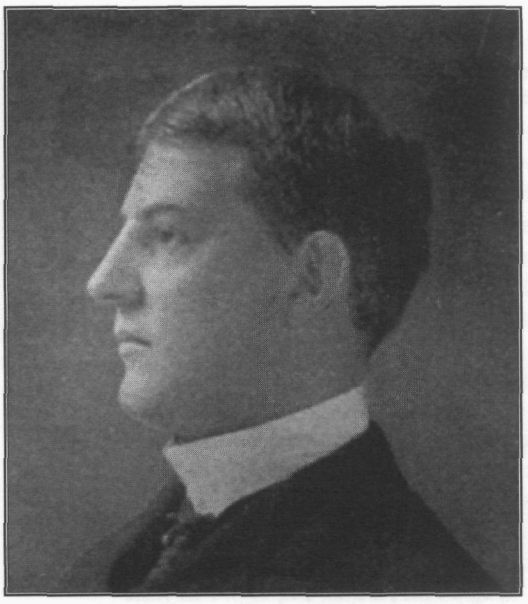
The Bankruptcy Reform Act of 1978 created the Bankruptcy Code, the U.S. Trustee – in 17 pilot judicial districts – and most importantly, created a court known as the United States Bankruptcy Court. The effective date of the Bankruptcy Code was October 1, 1979. Three whole years later, the bankruptcy world again was knocked on its ear with the *Marathon* case, and then three whole years after that, BAFJA. The Bankruptcy Amendments and Federal Judgeship Act of 1984 tried to disperse the cloud created by *Marathon* by establishing the bankruptcy courts as units of the district courts. Two years later, more amendments were added and the U.S. Trustee Program was made national in scope except for two states (North Carolina and Alabama, which seceded from the union once again). Thank God South Carolina didn't, this time!

The law was passed in 1986. The U.S. Trustee's offices in non-pilot districts were to open on August 21, 1987. In June 1987, then-Director Tom Stanton appointed A. Grey Staples, Jr., to head the Maryland office to be based in Baltimore. Grey had two and a half months to create an office from scratch, hire staff and be up and running. I signed on with the Program after being promised a Jacuzzi, which has still never been delivered. The Court was totally accommodating to our efforts and we used my Estate Administrator office in the Clerk's office as a base to operate out of while GSA graciously outfitted the area in the Fallon Federal Tomb designated for Senator Mikulski's office trash. They forgot to install HVAC. However, we did get the benefit of the elements – and compounds – leaking from the parking pad above us. G-13 was an appropriate designation. You may remember it well. It was like Stalag 13 on Hogan's Heroes. I remember it, too, and often wake up in the night screaming with cold sweat running down my face.

Deliverance came in 1994, when we moved to 300 W. Pratt Street, which used to be the Wilkens Brush factory and warehouse. I now have a view of Oriole Park.

Who Was "Collier" of *Collier on Bankruptcy?*

In 1898, William Miller Collier (1867-1956) was a 31-year old, newly-appointed referee in bankruptcy in Auburn, New York, who decided to write a treatise on bankruptcy at the advent of the Bankruptcy Act of 1898.



William Miller Collier

He was born in Lodi, Seneca County, New York, on November 11, 1867, the son of the Reverend Isaac H. Collier and Frances Miller Collier. In 1889, he graduated from Hamilton College and in 1892 earned a master's degree. He studied law at Columbia Law School and in various law offices in New York and Brooklyn before his admission to the bar of New York State. In 1890, he was appointed Clerk of the Surrogate's Court of Cayuga County, New York. In 1898, he was appointed referee in bankruptcy for the Northern District of New York.

In 1899, Governor Theodore Roosevelt made him a member of the New York State Civil Service Commission and three years later, he became president of the commission. In 1903, he began teaching the law of bankruptcy in the New York Law School. In 1903, President Theodore Roosevelt appointed him Special U. S. Assistant Attorney General and the following year made him solicitor of the Department of Commerce and Labor. From 1905-09, he was U.S. Minister to Spain and from 1921-28, he served as U.S. Ambassador to Chile. He was President of George Washington University from 1917-21. He was a noted sports fisherman, whose greatest joy was catching sharks off the Florida coast.

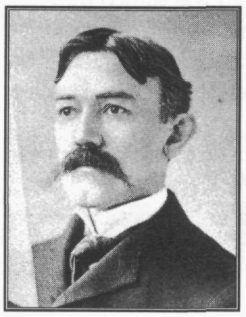
The first edition of his one-volume bankruptcy treatise, known down through the years simply as "*Collier on Bankruptcy,*" but originally entitled "*The Law of Bankruptcy and the National Bankruptcy Act of 1898,*" sold out on its first day of publication in September 1898. The work was reprinted four times before a second edition came out the following year.

In 1903, after the Congress enacted significant amendments to the Act, a fourth edition was published under the authorship of another referee, William H. Hotchkiss of Buffalo, New York. In 1905, the fifth edition appeared, written by Frank B. Gilbert of the Albany bar, who also wrote the editions six through thirteen, the latter edition published in 1923 containing four volumes.

In 1940, two years after Congress passed the Chandler Act amendments, the 14th edition of *Collier* was published under the editorship of Professor James W. Moore of Yale University. Professor Moore was the author of the monumental work, *Moore's Federal Practice.* A revised 14th edition edited by Professor Lawrence P. King of New York University, was published in 1974. When the Bankruptcy Reform Act of 1978 ushered in the U.S. Bankruptcy Code, the 15th edition was published in 1979, also under the editorship of Professor King. A revised 15th edition was issued in December 1996, in response to amendments to the Code enacted by Congress in 1984, 1986 and 1994. Editor-in-chief Lawrence King and a 10-member board continued to supervise the annual updates to *Collier* until the Professor's death in April 2001. Soon after, Alan N. Resnick and Henry J. Sommers were appointed editors-in-chief.

Maryland Referees in Bankruptcy

Baltimore City



Daniel L. Brinton

Thomas Foley Hisky

Daniel L. Brinton (1858-1906)	1898-1906
Thomas Foley Hisky (1865-1936)	1898-1922
Henry Duffy (1862-1948)	1906-1909
Willis E. Myers (1866-1933)	1909-1933
W. Ainsworth Parker (1874-1943)	1933-1943
Floyd J. Kintner (1888-1975)	1943-1946 *(Temporary)*
Stewart O. Day (1897-1985)	1946-1947 *(Temporary)*
Paul R. Kach (1900-1983)	1947-1949
J. Martin McDonough (1905-1983)	1950-1955
Joseph O. Kaiser (1914-1999)	1956-1979
	(First statewide, full-time)
Glenn J. Goldburn (1929-)	1972-1981
	(Part-time, Hyattsville)

Frederick and Montgomery Counties

E. Y. Goldsborough (1839-1915)	1898 to at least 1911

Allegany County

Albert A. Doub (1865-1946)	
George Henderson (1888-1981)	1912-1931
Harry R. Donnelly (1873-?)	1931-1933
Elmer J. Carter (1897-?)	1933-1936
Morgan C. Harris (1898-1964)	1936-1937
William S. Jenkins (1910-1998)	1937-?

Anne Arundel, Prince George's and Howard Counties

Daniel M. Murray (1859-1935)	

Baltimore County

John D. Parker (1882?-1915)	1904
Emanuel W. Herman (1871-?)	1910
Charles Ross Mace (1869-?)	1911
J. LeRoy Hopkins (1884-1938)	1913-1938
Richard A. McAllister (1905-1985)	1938-1940

Carroll County

E. Oliver Grimes, Jr. (1839-?)	1910-1911
Theodore F. Brown (1885-1966)	1914-1927
William L. Seabrook (1856-1931)	1928-1931

Cecil County

William T. Warburton (1852-1922)	1910-1911
Henry A. Warburton (1882-1950)	1914
Henry L. Constable (1877-1964)	1922
William P. Constable (1882-1976)	1927
Floyd J. Kintner (1887-1975)	1933-1946

Calvert, Charles & St. Mary's Counties

Walter J. Mitchell (1871-1955)	1904
Ferdinand C. Cooksey (?-?)	1910 to at least 1927

Frederick County

Edward S. Eichelberger (1856-1914)	1910
Arthur D. Willard (1875-1959)	1914-1930
Holden S. Felton (1881-1965)	1930-1948

Garrett County

Stuart F. Hamill, Sr. (1880-?)	1916 to at least 1927

Harford County

Peter Lesley Hopper (1855?-1917)	1910-1914?
J. Edwin Webster (1857-1928)	1927
Stewart O. Day (1897-1985)	1928-1949

Kent, Queen Anne's, Talbot, Dorchester and Caroline Counties

Sidney P. Townshend (1862-?)	1911-1914
Edward Tylor Miller (1895-1968)	1924-1942
(Position terminated, November 17, 1944)	

Montgomery County

Paul Y. Waters (1877?-)	1914-1920
Robert L. Warfield (1888-1970)	1927

Washington County

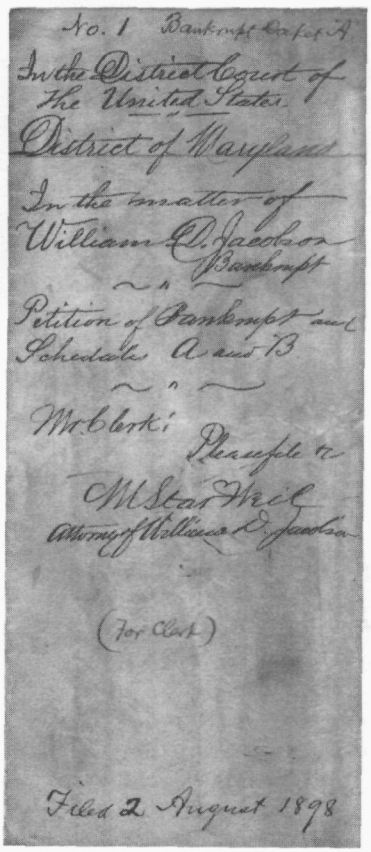
Abraham C, Strite (1860-1918)	1898-1904
Scott M. Wolfinger (?-1941)	1910-1911
Norman B. Scott, Jr. (1856-1921)	
Omer T. Kaylor, Sr. (1885-?)	1921-1947

Worcester, Wicomico and Somerset Counties

Adial P. Barnes (1848-1913)	1910-1913
Elmer H. Walton (1874-1915)	1914
Frederick W. C. Webb (1889-1956)	1916-1938
Amos W. W. Woodcock (1883-1964)	1919
William W. Travers (1902-1979)	1938-1946
E. Dale Adkins, Jr. (1915-1982)	1946-1951
John W. T. Webb (1918-1990)	1951-1955

The First Maryland Bankruptcy Cases Filed Under the Bankruptcy Act of 1898

The old U.S. District Court building where the first Bankruptcy Court cases were filed and heard in 1898.


No. 1 Bankrupt Docket A
In the District Court of
The United States
District of Maryland
In the matter of
William D. Jacobson
Bankrupt
Petition of Bankrupt and
Schedule A and B
Mr. Clerk:
Please file
M. Star Weil
Attorney of William D. Jacobson
(for Clerk)
Filed 2 August 1898

The First Maryland bankruptcy petition (1898) folded in fours.

On July 1, 1898, the Bankruptcy Act of 1898 was signed into law by President William McKinley. The Act became effective immediately, but also provided that no voluntary petitions could be filed until August 1, and that no involuntary petitions could be filed before November 1.

On Monday, August 1, 1898, the first four voluntary bankruptcy petitions in Maryland were delivered to James W. Chew, Clerk of the U.S. District Court at Baltimore, but were not docketed until the next day, August 2:

Case No. 1 William D. Jacobson,
a seller of "general merchandise"

Case No. 2 Nathan Weinberg

Case No. 3 Lehman Blum

Case No. 4 David Glickman,
employed by his brother in the manufacture of infants' shoes

M[ayer] Star Weil, Esquire (1846-1905) filed Case Nos. 1, 3 and 4, for Jacobson, Blum and Glickman respectively, the petitions and schedules of which were handwritten. Case No. 2, that of Nathan Weinberg, was filed by the firm of Steiner & Putzel (Hugo Steiner and Lewis Putzel), all of whose pleadings were typewritten. Before flat case files were mandated by court rules in the mid-twentieth century, all court pleadings were folded in fours, tied with red string ("red tape") and kept in the clerks' offices in narrow file drawers.

In those days, Judge Thomas J. Morris (1837-1912) was Maryland's only U.S. District Judge. By August 1898, Judge Morris had appointed Daniel L. Brinton (1858-1906) and Thomas Foley Hisky (1865-1936) as the first two Maryland bankruptcy referees, both of whom were Baltimore attorneys. On August 13, Judge Morris signed orders of reference assigning Case Nos. 1 and 2 to Mr. Brinton, and Case Nos. 3 and 4 to Mr. Hisky.

Monday, September 5, 1898, was the date appointed for the first meeting of creditors in the case of Lehman Blum (Case No. 3), but because that was Labor Day, the meeting was adjourned to the next day, Tuesday, September 6, 1898. On that occasion, Referees Brinton and Hisky presided over the very first bankruptcy hearing in the Circuit Courtroom at the Federal Courthouse at Baltimore. This was the 1889 castle-like courthouse and post office that stood on the present site of Courthouse East, the former U.S. Courthouse and Post Office built in 1932.

At the hearing, Referee Hisky appointed M. Star Weil trustee for Mr. Blum (Case No. 3), and Referee Brinton appointed Charles A. Briscoe trustee for Robert W. Spring, trading as R. W. Spring & Co. (Case No.

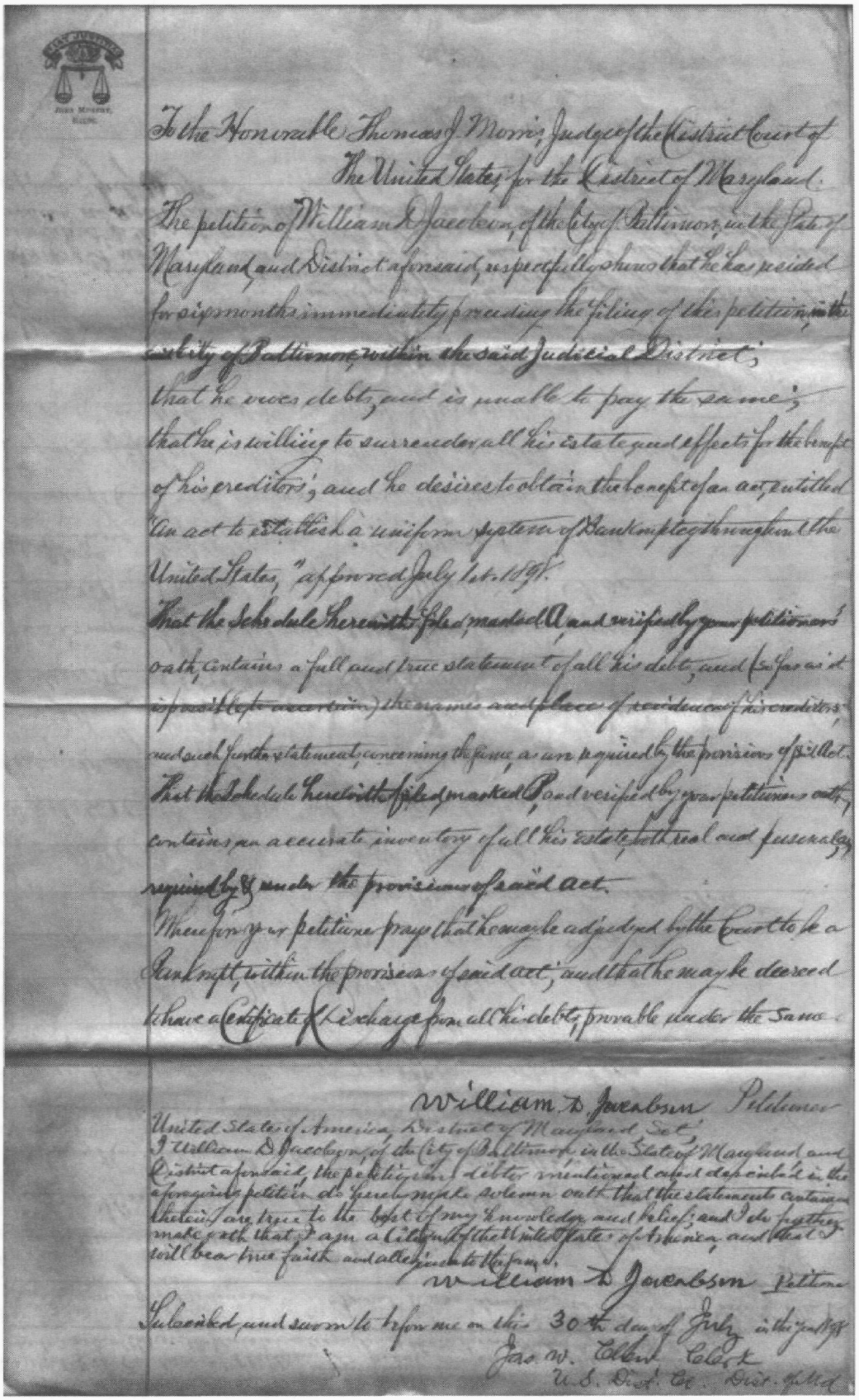
7). Mr. Spring ran a wholesale liquor business at 205 W. Pratt Street.

On November 1, 1898, Judge Morris signed the very first Maryland bankruptcy discharge under the Act in the case of Nathan Weinberg (Case No.2).

On November 2, 1898, the first involuntary bankruptcy petition was filed in Maryland by Charles F. Harley, Esquire, in the case of William J. Mitchison (Case No. 36), on behalf of the petitioning creditor, Annie B. Pinning, t/a Pinning & Co. Mr. Mitchison was a builder and Pinning & Co. was one of his suppliers. Carville D. Benson was counsel to the alleged bankrupt and also represented his other creditors who opposed the petition. On December 19, 1898, the case was dismissed by order of Judge Morris, on the ground that the petition was defective, because Mr. Mitchison had more than 12 creditors, requiring three petitioning creditors.

On December 9, 1898, J. H. Mitnick, Esquire, filed the first objection to discharge on behalf of creditor Paul S. Levy in the case of William D. Jacobson (Case No. 1). On February 25, 1899, the objection was overruled by Judge Morris who signed the discharge the same day.

The original files in these and several other 1898 bankruptcy cases filed in Maryland are on loan from the National Archives until January 2005. Because the papers are fragile, they were electronically scanned by the Information Technology Group of the U.S. Bankruptcy Court for convenient viewing by the Bar and Public.



To the Honorable Thomas J. Morris, Judge of the District Court of
The United States for the District of Maryland.
The petition of William D. Jacobson, of the City of Baltimore, in the State of
Maryland, and District aforesaid, respectfully shows that he has resided
for six months immediately preceding the filing of this petition in the
City of Baltimore, within the said Judicial District;
that he owes debts, and is unable to pay the same;
that he is willing to surrender all his estate and effects for the benefit
of his creditors; and he desires to obtain the benefit of an act, entitled
"An act to establish a uniform system of Bankruptcy throughout the
United States," approved July 1st. 1898.
That the Schedule hereunto filed, marked A, and verified by your petitioner's
oath, contains a full and true statement of all his debts, and (so far as it
is practicable to ascertain) the names and places of residence of his creditors;
and such further statement, concerning the same, as are required by the provisions of said Act.
That the Schedule hereunto filed, marked B, and verified by your petitioner's oath,
contains an accurate inventory of all his estate, both real and personal,
required by and under the provisions of said Act.
Wherefore your petitioner prays that he may be adjudged by the Court to be a
Bankrupt, within the provisions of said Act, and that he may be decreed
to have a Certificate of Discharge from all his debts, provable under the same.

William D. Jacobson Petitioner

United States of America, District of Maryland, Sct.
I William D. Jacobson, of the City of Baltimore, in the State of Maryland and
District aforesaid, the petitioner and debtor mentioned and described in the
aforegoing petition do severally make solemn oath that the statements contained
therein, as to me, are true to the best of my knowledge and belief; and I do further
make oath that I am a citizen of the United States of America, and that I
will bear true faith and allegiance to the same.

William D. Jacobson Petitioner

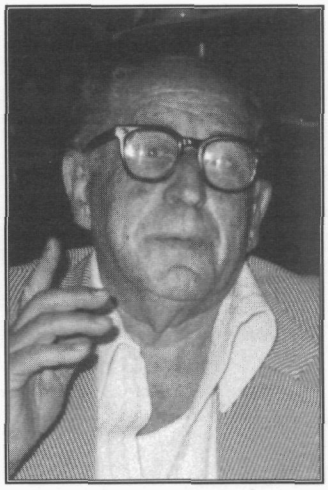
Subscribed and sworn to before me on this 30th day of July in the year 1898
Jas. W. Elbert Clerk
U.S. Dist. Ct. Dist. of Md.

The first bankruptcy petition was handwritten.

Remarks of Hyman P. Tatelbaum

at the Dedication of Courtroom 9-C
Garmatz Federal Building and U.S. Courthouse
Wednesday, September 14, 1983

. . . When I first came into this courtroom, it reminded me immediately of the courtroom when I first started to practice law.



Hyman P. Tatelbaum

Willis Engel Myers (1866-1933) was the referee, and he was what is called a part-time referee. And when they meant part-time, they really meant part-time, like twice a week.

Willis Myers had an office on Fayette Street, and at that time the Court followed the referee. Wherever the referee's office was located, that is where the Court was. And when you had a meeting of creditors in Mr. Myers' office, he pulled up three or four chairs around his desk, and that was the meeting.

Times have changed. I didn't practice before Mr. Myers. I'm not that old really.

But the referee that I remember is W. Ainsworth Parker. And fortunately the referee's courtroom and staff was upgraded considerably with Mr. Parker, because he had an office in 1702 First National Bank Building. So they moved everything from Fayette Street to the First National Bank Building.

Mr. Parker had a very, very large office. And he had a desk in a corner, and that was chambers.

Now, you couldn't have any private conversation with Mr. Parker, because next to his desk was another one, and that was occupied by a lady called by everyone, "Miss Helen."

Miss Helen was the secretary to the referee. She was the chief clerk, she was the bookkeeper, she was the cashier, she was the filing clerk. And rumor had it that she was the assistant referee, and wrote some of the opinions, because she probably knew more bankruptcy law than anybody around at the time.

You couldn't carry on any kind of conversation with Mr. Parker at all, but if you talked to Miss Helen, you would get all the answers.

Back about two or three feet from Mr. Parker's desk was a counsel bench for two counsel. Evidently in those days at no time was there ever more than two counsel. And behind that were two benches for six creditors, if they came.

In all my years of going over to Mr. Parker's, I have never seen anybody stand in that court. So I would think that three or four creditors would be a crowd.

In the back of the room were all the files of the Bankruptcy Court. And when Miss Helen went out to lunch, the Bankruptcy Court was closed. When Miss Helen went shopping, the Bankruptcy Court was closed. And around Christmastime when Miss Helen had to do a lot of shopping, forget it. Save your papers till after New Year's!

Following Mr. Parker we had Paul Kach. It was much easier to have a conversation with Mr. Kach, because he was a bachelor, and every day you could find him in Horn and Horn Cafeteria on Baltimore Street. If you ever wanted any conversation with Mr. Kach, you had to go to Horn and Horn at six o'clock, and hope nobody beat you to the seat, because if they did, Horn and Horn served free coffee, and you could drink all night waiting before you talked to Mr. Kach.

Mr. Kach was followed by J. Martin McDonough. And around that time they moved to the first office of a very small courtroom. Mr. McDonough did not serve too long, but I have an instant thought about Mr. McDonough. He represented the Morgan Guaranty Bank, and at one time or another we had to go to Philadelphia to have a few meetings in connection with the Chapter XI which I had pending before the Court called Jerry Waldman. One of his principal assets was the Philadelphia Eagles.

Martin and I went to Philadelphia, and when we were through, we took the train back. Marty, being a member of Piper and Marbury, but more important, being paid by Morgan Guaranty, sat in the parlor car in a reserved seat.

As counsel under a Chapter XI, I had instructions from Judge Kaiser, never sit anywhere but the coach, which I did. Except that Marty asked me would I come forward and look for him, which I did. And I don't know how he arranged this, but there was a seat next to him which I occupied all the way

back to Baltimore.

The ride was bumpy, very, very bumpy; and Marty and I had to have a martini or two to sort of soften the blow.

And on the way back Marty told me this story when he got a telephone call from an attorney who represented the Morgan Guaranty. He said we have a financing statement and security agreement on the Eagles. And we want you to see what you can do now. They owe us six million dollars, but we are not really anxious for six million dollars. We really want the Eagles.

Now, do you have a conflict with the Eagles? No.

Are you ready to see what you can do against the Eagles? He said, yes. And then he hung up.

And after he hung up, he called in his associate and said, "Who in the heck is the Eagles?"

For some of you people I might as well tell you the Eagles is the Philadelphia National Football League Eagles.

Following Marty McDonough we had an attorney from Bel Air. I don't know how he got into this deal, but he became a referee, and at one time or another he threatened to move the office to Bel Air.

Well, he really didn't carry that out, but he didn't serve that long anyway.

And after that came Joseph O. Kaiser. We were down at the Post Office, courtroom, chambers, and Judge Joe Kaiser, who was then referee Kaiser, later Judge Kaiser, served from January 1, 1956, to May 31, 1979.

He was really our first full-time referee, and full-time Bankruptcy Judge. Judge Kaiser had a very quiet sense of humor, which you had to understand, and he always claimed that I had ruined the Bankruptcy Court by bringing the Waldman case to Baltimore, when it belonged in Philadelphia. It didn't belong, of course; and it was about one-third of the bankruptcy work.

Well, in view of the fact that Judge Kaiser served this length of time, I have a number of stories, but I have been told by Judge Schneider that I am to make a few short remarks, and after the remarks there will be a reception, which I take to be refreshments.

So in order not to hold up the refreshments, I'll confine it to two very short stories.

Jerry Waldman had to testify – had to be in Bankruptcy Court on a matter where somebody wanted a priority, and had filed a petition. And in those days it was a petition. Now an application. Filed a petition, and the hearing by Judge Kaiser was always at two o'clock in the afternoon, for the afternoon hearing.

Mr. Waldman and Meyer Maurer, counsel, told me they were leaving Philadelphia and would be in Baltimore at 1:30, he would take the cab, meet me at the courthouse at quarter of 2:00. That's fine.

I got to the Court well before two o'clock. There was no Mr. Waldman. He is usually very much on time. I looked around. He still didn't come.

Judge Kaiser always had people coming in his chambers, and he was usually late in getting out, because he had so many people that he had to talk to. Well, this day he came out about five minutes of 2:00, and as was his practice, he said good afternoon to counsel for the debtor. He said "Good afternoon, Mr. Tatelbaum." He said "Good afternoon, Mr. Waldman."

"Judge Kaiser had a very quiet sense of humor, which you had to understand ..."

Hyman P. Tatelbaum

Well, I thought Mr. Waldman had come into the courtroom. I looked around. There was no Mr. Waldman.

Well, that was Mr. Kaiser's way of telling me where was Mr. Waldman. But I had hoped that he would be there.

Judge read the papers, and sometimes he liked to review some of the matters, and he reviewed these papers; and I made a few notes at that hearing and subsequent hearings on how he spoke. He would say to me, he would say to the courtroom, "Let's see what the assets of this case are."

"Well, they have a football team that doesn't win many games." He said "They have an arena in Philadelphia called the Spectrum which leaks like a sieve." He says, "They have yellow cabs in Philadelphia, Camden that are now on strike." He said, "They have a field in Philadelphia called Connie Mack Stadium where the little league plays, evidently. And they have a hundred story building in Philadelphia called The John Hancock Building, where all the birds are being killed, because they are running into the glass," which was true.

Then he would say, about this time it was 2:30, he would say, "Let's see, we have to make a priority claim, and I would like to hear from Mr. Waldman."

Well, about that time Madeline Cieselska came

in and handed me a note, and it said "Mr. Waldman is on the phone." Very strange. So I told Judge Kaiser I had a call from Mr. Waldman. He told me to tell Mr. Waldman to get off the phone; he was due here at two o'clock.

I went back, I spoke to Mr. Waldman, and I came back and I said, "Judge, here is a very unusual situation." And he reminded me everything about this case was unusual.

I said, Mr. Waldman and Meyer Maurer got on the train, and they had such an interesting conversation that both of them fell asleep. This is absolutely true. And they just woke up, and they are in Washington. Mr. Waldman had just rented a car, and was driving over to Baltimore.

"So I had a brilliant idea, which later on turned out not to be so brilliant."

Hyman P. Tatelbaum

Judge Kaiser's only comment is, "Don't you charge that car to this Chapter XI."

The last story about Judge Kaiser concerns, of all things in a Bankruptcy Court, hot steamed crabs.

Every year at the breakout party of the training camp in Hershey, Pennsylvania, Jerry Waldman had a practice of getting steamed crabs from Obrycki's. And there was a plane that left around noontime from Baltimore, and it got to Philadelphia very quickly. And he put the freight on the plane, and the boys were able to enjoy hot steamed crabs.

Now, a call from Mr. Waldman, he said a terrible situation, very, very bad. The plane was no longer running on schedule, and they couldn't deliver the crabs to the Eagles. What should he do? He knows how sensitive football players are, especially three and four hundred pound players, and they need these crabs.

So I had a brilliant idea, which later on turned out not to be so brilliant. We had a plane for carrying the players to the game, and I got the idea why don't you get the plane, come to Baltimore, I'll call Obrycki's, and I'll see that the crabs are delivered. He said that's great. And he did that. And evidently they had a very nice time.

The next morning I got a telephone call that Judge Kaiser wanted to see me. So I had no idea what he wanted. So I went over there. And as I walked in, his secretary said, "The Judge is waiting for you." I didn't like the way that sounded.

I sat down, and Judge Kaiser said to me, "Have you been to any crab feasts lately?"

Well, I just couldn't understand how he knew that we had a crab feast yesterday. Later on I found out that Judge had subscribed to the Philadelphia Inquirer Bulletin, and he knew more news than I ever knew.

He said to me, "Whose idea was that?" I said that was my idea.

He said, "You think that belongs to the Chapter XI?" I said, "Yes, I do."

He said, "Well, I want you, before two o'clock, to come back here and tell me exactly how much that plane cost."

I did. I came back, and I said, "Judge, the plane cost $2,161." He said, "All right." He said, "When I give you a fee, I'm going to take it off." He never did.

Judge Kaiser retired May the 31, 1979, but he worked an additional two months.

Judge Harvey M. Lebowitz was appointed June 1, 1979, and he resigned February 1, 1982. At the time of Judge Lebowitz' appointment, the Code was just coming in, and there was this avalanche of cases, and I'm afraid Judge Lebowitz didn't know what struck him when he came into the courtroom.

It was his job, and he did set up offices, new personnel, and did a simply terrific job in getting everything started.

Of course after he resigned, Judge Schneider was appointed.

We now in Maryland have two bankruptcy judges, Judge Schneider in Baltimore and Judge Mannes in Rockville.

In closing, I would like to give you just an idea of what has changed in the bankruptcy field. In 1979 there was 2,151 cases filed. In 1978, the year before, there were only 1,794 cases. As of June 30, 1983, there were 6,370 cases filed.

But that really only tells part of the story, because after that you have the adversary hearings, the motions to lift stay, pretrial conferences, and all the things that have gone with it. It has just been a tremendous workload for the Judges, and they have done a marvelous job.

Miss Helen and the Way It Was

(From the Vertical File in the Maryland Room of the Enoch Pratt Free Library)

From *The Baltimore Sun*, August 23, 1944:

Financial Note – Bankruptcy business in Maryland is bad and steadily getting worse.

It's the war, all hands agree, which has knocked the props from under what just a few years ago was a big-money preposition.

Take the plight of Floyd J. Kintner, acting United States bankruptcy referee, for example.

Mr. Kintner, an Elkton resident, presides over the Baltimore city business – what's left of it – for Uncle Sam.

30 Clients a Month in 1932

Back in 1932, the office had as many as 30 clients per month and rang the bell with a grand total of 257 for the year, an all-time high.

With such brisk business, four persons besides the referee were employed in the office.

"Often we had to work until 11 or 12 o'clock at night," recalled Miss Helen Yestadt, veteran secretary.

But now – in the first six months of this year only 13 official calls were paid the office by hard-pressed businessmen seeking surcease from loss or angry creditors looking for their vagrant dough, and lonely Miss Yestadt, the only regular employee left besides the referee, is hard put keeping the cobwebs from gathering on the files.

New Territory Taken Over

Even taking over new territory – Montgomery, Baltimore and Prince George's counties were added to Baltimore city's office recently – failed to help matters.

The depressing financial curve – from the standpoint of a referee eager to be of service to his fellow men – went something like this:

From 1910, when the office started to keep monthly tabulations of business transacted, to 1921, less than 100 business deals were put through annually.

In 1921, the 100 mark was passed and the figures kept moving upward until the peak years of 1931 and 1932.

Less Than 100 in 1939

But from then on, things got worse. Clients dropped off gradually until in 1939 there were less than 100 again, 91 to be exact.

In 1940 there were 82; in 1941, 67; in 1942, 45; and in 1943, only 34.

There is some consolation for Mr. Kintner in the fact that his has not been the only bankruptcy business which has suffered. Throughout the State, business has been so bad that when referees either expired or quit their jobs, others were not appointed by the Federal judges.

8 Counties Have No Referees

Eight counties now have no referees at all, while groups of others have one referee.

The low mark was reached in Kent, Queen Anne's, Talbot, Dorchester and Caroline counties. These five had one referee, Edward T. Miller, of Easton, until Uncle Sam called him into service. Now they have none and apparently are getting along nicely.

But the bankruptcy officials insist they'll have the last laugh.

"Wait until the war's over," they chortle. "Then our old friends will be back with us again."

From *The Baltimore Sun*, May 10, 1959:

Helen A. Yestadt – Colleagues Honor Retiring Court Clerk

Fellow workers yesterday presented Miss Helen A. Yestadt, deputy Federal Court clerk, a diamond-studded watch on the occasion of her retirement from Government service.

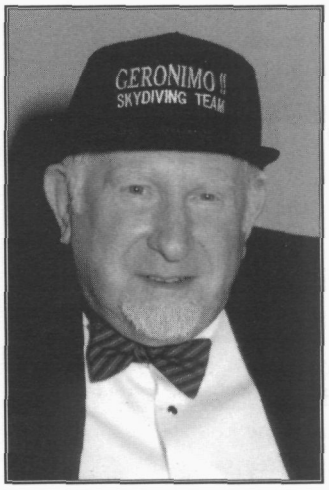
Miss Yestadt has been a clerk in the office of the United States Referee in Bankruptcy for 30 years. Presentation was at a picnic of Federal Court workers.

From the Perspective of the Early 1960s:

An Aging Maryland Bankruptcy Lawyer Reflects on the Beginning of His Bankruptcy Act Practice and on Joseph O. Kaiser

BY MICHAEL J. SCHWARZ

As I look back at those earliest days, a young lawyer just starting out in a solo practice, eager, hungry, doing everything for the first time, making mistakes, struggling, beginning a bankruptcy practice, learning the system, searching for clients, persevering, it seems almost like a dream. It was all so different then.



Michael J. Schwarz

In 1961, when I came to the bar, one full-time bankruptcy referee and one clerk were the entire bankruptcy system for the state. They ran it from a three-room suite in the old Post Office building in downtown Baltimore, where the U.S. District Court for the District of Maryland was then located. Bankruptcy cases were filed in the District Court. The Bankruptcy Act of 1898 was in effect, amended by the Chandler Act of 1938, which first introduced chapter proceedings into bankruptcy practice. In Act parlance, Joe Kaiser was the Referee in Bankruptcy, the only judicial officer presiding over bankruptcy cases. The court was located in Baltimore City, but Joe "rode circuit" by bus, all over the state, to such locales as Hagerstown, Salisbury and Denton.

The clerk's office was the anteroom to his chambers. You went there to file cases and examine court files. Miss Ethel Eskridge presided. A door from chambers led directly into a small courtroom. It was guarded by two bronze eagles. They were perhaps 36 inches high. They sat on pedestals, located on each side of the bench, positioned against the back wall behind the bench. They looked out at the courtroom, metal wings spread, setting an appropriate, somber judicial tone. It was here that Joe presided over trials and hearings, and also over meetings of creditors, now called 341 meetings.

Joe and Miss Ethel single-handedly administered the 1200 or so cases that were filed annually in those years. I remember his dismay one year when the new case count rose above 1400. The increasing caseload got him an additional clerk – Miss Madeline Cieselska, followed, later on, by Erma Jane Hagert and Karen Ballard. That was the entire bankruptcy clerk's office staff in Baltimore, until as late as 1976, when the court moved to the Garmatz Courthouse and Federal Building, its current location. Erma continues to work in the clerk's office to this day.

MEETING THE REFEREE

Harry Sachs, a sole practitioner with a collection practice, had suffered a heart attack, and was home from the hospital recuperating. His collection practice was drying up. One had to stay on top of a collection practice, or it ground to a halt. He asked me to help him out, and run it for him in his absence. Fresh out of law school, I certainly had nothing better to do.

One of the corporate debtors we were pursuing had just filed a bankruptcy case. Harry told me that the next step was to have a receiver appointed. I found a form, followed the boilerplate language, prepared an appropriate petition, and went to see Joe Kaiser. Things were much simpler then. You went into chambers, sat at his desk, presented your papers, and discussed your problem. I told him that I was there to have a receiver appointed in such and such case.

He asked me why I needed a receiver in such and such case. Oh, you needed a reason. It's not automatic. Think fast. I couldn't very well give as the reason that Harry told me to do so. So I hemmed and hawed, unable to explain why a receiver was actually required for the property of the bankrupt. He handed the papers back to me. Relief denied. I had run into a brick wall. That was the first time that I met Joe. I was a young lawyer, fresh out of law school, ready to begin a career. Now what?

THE EARLY 60'S ERA

In that era, a Jewish lawyer rarely entered the mainstream, business practice legal world of the big law firms. When he did, it was to join one of the few firms recognized as being a Jewish law firm. More typically, he immersed himself in a small or solo niche practice, such as personal injury, criminal or collection. Many attorneys of that era were more comfortable with that arrangement.

Bankruptcy practice, especially, came to be the domain of many Jewish lawyers of the day. (I believe that to be true not only in Baltimore, but in most major cities nationwide.) Few, however, would call themselves bankruptcy practitioners. Bankruptcy practice was something that one did as an extension of a collection practice, the politically correct term for which was then a "commercial" practice. You tended to do both, not either.

And so, attorneys such as Lou ("Bulldog") Sagner, Hyman Tatelbaum, Irving Grandberg and Harry Sachs

were the commercial players (major and minor), and therefore the bankruptcy players, of that day. Howard Rubenstein, then a young man in the Sagner office, later to be joined by Howard Heneson, was there, too. Collecting for creditors in the state courts, they would continue to represent the interests of their clients in the bankruptcy cases that often followed.

I think of Jerry Asch, in the Tatelbaum office, as the first attorney in this state who was generally recognized as a bankruptcy practitioner.

It was difficult for attorneys with established creditor relationships, receiving a steady flow of work from them, to represent debtors in bankruptcy cases. They tended to confine themselves to creditor work. A distinction of sorts emerged between counsel who were debtor-oriented and counsel who were creditor-oriented. That distinction continues to some degree to the present.

The bench and the bar did not hold bankruptcy practice or bankruptcy cases in particularly high esteem. The volume of work was limited, and not that many attorneys handled bankruptcy cases for debtors on a regular basis. To a young Jewish lawyer with an accounting background, looking for clients and trying to build a new solo law practice, debtor bankruptcy representation, a neglected, but apparently untapped, area of the law, seemed to hold promise.

RULES

There were no bankruptcy rules. Bankruptcy General Orders existed. They could pass for rules, but they were of limited scope and provided only modest procedural guidance and structure. A set of comprehensive nationwide District Court rules for bankruptcy cases was adopted in 1973. It was then that the Referee became a Bankruptcy Judge. I recall an earlier, very modest set of rules, the first bankruptcy rules that I do remember, likely adopted sometime around 1970. They were probably only local rules. Memory does grow dim.

TRUSTEES

There was no U.S. Trustee system, and no panel of standing trustees. Creditors elected trustees at the meeting of creditors. Anyone could be the trustee, subject to the approval of the court, so long as he posted a fidelity bond to protect the estate. Attorneys, armed with powers of attorney from their creditor clients, did the voting, and usually voted for themselves.

Trustees, then as now, were paid a percentage of the liquidation proceeds generated from the administration of the property of the bankruptcy estate. Trustees' commissions could be rewarding in a sufficiently large case. The fees of attorneys representing the trustees could be even more rewarding. It didn't take long to learn that. Not surprisingly, the trustee often became his own attorney, or, if not, his attorney could usually be found in the same law office.

Those attorneys in Baltimore who handled a high volume of collection cases effectively controlled the election of trustees in those few commercial bankruptcy cases that mattered. They held the votes. It was those attorneys who made the big bucks when the occasional case came along from which the big bucks could be made.

Typically, in the no-asset case, no trustee was elected. No one cared to assume the responsibilities if they could not get paid for doing so. It was a very practical system. The laws of economics prevailed. This system of electing trustees, whatever its drawbacks was self-regulating and economical. Whenever a case came along with a dollar to be made, there was never any shortage of willing attorneys available and ready to oblige. But, then as now, substantially all of the cases were no-asset consumer cases. They were routinely closed, without the appointment of a trustee. It was up to Joe Kaiser, in his examination at the meeting of creditors, to monitor the case, and give it leadership and direction.

The referee could appoint a trustee if none was elected. In Chapter XI arrangement cases a standby trustee was elected, in the event of the conversion of that case to a liquidation proceeding. The system enabled a nimble young lawyer the opportunity to occasionally pick up a few of the picked-over crumbs.

STAY AND INJUNCTION

There was no stay. The stay came into bankruptcy practice with the adoption of the comprehensive rules in 1973. Before that there was no mechanism to control the post-filing debt collection efforts of creditors. A consumer bankrupt's response to a state court collection action was to appear in that proceeding and plead jurisdiction, an uncertain, expensive and cumbersome process, especially when multiple actions were pending in various courts.

The stay applied not only to debt collection, but also to the lien enforcement of secured creditors. Applying the stay to a secured creditor was altogether new and unprecedented. It created quite a stir at that time. Many in the collection chain were unaccustomed to the predominance of federal bankruptcy law over state property law, and found the stay difficult to accept.

I recall an incident with the Sheriff of Harford County, executing a state court attachment or replevin order against, and about to seize, machinery and equipment of my new, just filed Chapter XI contractor client. My explanations to him of the new bankruptcy stay were to no avail. He had a valid state court order, he knew his job, he had instructions to seize, and he just didn't care about some federal law, beyond his understanding or experience. A telephone call to the Assistant Attorney General who advised the sheriffs statewide, resolved what could have been an otherwise nasty situation.

"There was no court reporter, and no sound recording equipment. You could engage a private court reporter, at your own expense, to record the testimony, in that rare case that might warrant doing so."

Michael J. Schwarz

Likewise, there was no statutory injunction prohibiting a creditor from post-discharge debt collection. The bankrupt had to be diligent, appear in any such collection action, and affirmatively plead his bankruptcy discharge, or the claim, otherwise discharged, could still be reduced to judgment.

NOTICES

The court mailed all notices. After a new case was filed, the clerk directed a printed form to all of the creditors identified in the A schedules. The form advised of the filing, the name of the bankrupt, the case number and the right to file a proof of claim. It also provided the date of the meeting of creditors and other key dates. The name, case number and dates were typed into blank spaces in the form. The rest of the form was printed boilerplate. After you had read the text of the form one time, you knew it, and thereafter you had only to take note of the name and case number, and the typed in dates, which were the only variable information on the form.

Joe Kaiser told the story that once, in an effort to accommodate out of town attorneys and their clients, he arranged for a hearing room in Hagerstown, where, instead of his usual courtroom, he would conduct meetings of creditors for cases originating in Western Maryland. The text of the printed form was appropriately changed, but the attorneys did not bother to read it. They all knew what it said. So no one showed up for his Hagerstown docket. They were all in Baltimore waiting for him.

PROOFS OF CLAIM; CASE PAPERS

The clerk routinely included a Proof of Claim form with the initial notice mailed out to every creditor. The creditor was encouraged to fill out and return his completed claim. One of the relevant dates in the notice was a final bar date for the filing of claims. As a result, numerous completed proofs of claim were returned to the clerk, who then had to file each one in the proper case file. The system finally learned to sidestep this paperwork blizzard by not mailing the Proof of Claim form, not fixing a bar date, and by affirmatively advising creditors not to file claims unless and until advised to do so.

In those days, all of the case papers: schedules, pleadings, motions, petitions, orders, claims, etc., were retained in one case file, with each document numbered consecutively, as filed. Discovery and discovery responses, just like any other pleadings, were filed with the court. There was no distinction between administrative issues, contested matters, and adversary proceedings. Before 1973, no one ever heard of a lift stay motion.

THE RECORD

There was no court reporter, and no sound recording equipment. You could engage a private court reporter, at your own expense, to record the testimony, in that rare case that might warrant doing so. Joe carefully took notes, and he would note whatever testimony he felt was worth preserving. His notes became a part of the court file, and were open to the public.

CHAPTER PROCEEDINGS

Chapter XIII (Wage Earner) cases were rarely prosecuted. In all of my years of Act practice, I filed only one Chapter XIII case. It was after the 1973 stay. Then, as now, Chapter XIII cases could be dismissed at will, and my client needed to employ the stay. Some things never change.

Chapter XI (Arrangement) proceedings, the direct ancestor of today's Chapter 11 reorganization cases, were available and in common use, but could only be applied to affect the rights of unsecured creditors. The court was without jurisdiction over secured claims in arrangement cases. Before 1973, the secured creditor could proceed against his collateral at will, unfettered in any way by the pending arrangement case.

The Chapter XI debtor was not automatically continued in possession of its property, as occurs under the Code. You had to petition the court to be a debtor in possession. A creditor might ask that the debtor be required to post a bond, as a condition of its being continued in possession of its property, which, if granted, was devastating to a debtor.

Until the passage of the Bankruptcy Code in 1978, Congress was reluctant to permit any generalized tam-

pering with the rights of secured creditors. The claims of secured creditors could be modified in Chapter X (Reorganization) proceedings, but entry into Chapter X required a preliminary showing of some overriding public interest. Few made it, and not that many Reorganization plans were confirmed in Maryland. Chapter XII, exclusively for partnerships, was also available. It proved useful in addressing the real estate development excesses of the 70's.

THE START OF A CAREER

My first bankruptcy case was for a career military serviceman overwhelmed by debt, stationed at the Patuxent Naval Air Station in Southern Maryland, about to be discharged from the service. In those days a serviceman was presumed to be a gentleman (no sexism intended – the military was then essentially all-male). In the military tradition it was considered ungentlemanly not to pay your debts. Knowing that, the used car dealers, small loan companies and other merchants who had offices, shops and lots just outside the main gate of the base, employed a devastating collection technique. When unpaid, they wrote to the commanding officer, apprised him of the situation, and requested his assistance in effecting collection. With enough pressure, a career serviceman would eventually be discharged from military service.

In the case of my client, when threatened with expulsion, he had 19 years in the service, and was just one year from his pension and retirement. On the meager salary of a serviceman, he was unable to pay the obligations that he had contracted.

His bankruptcy went well for him. It went well for me, too. With his debts discharged, he could no longer be discharged from the service. His pension and retirement were safeguarded. Relieved, he returned to the base, and told his buddies about his bankruptcy experience, and his lawyer in Baltimore. Some of them were also overwhelmed by obligations to the very same merchants, as were some of their buddies. And so, my bankruptcy career began.

THE FILING

The filing fee for a liquidation case was $50. The party filing the case, the debtor in Code parlance, was called a bankrupt, in the parlance of the Act. No deference to political correctness in those days. Each case was filed individually. There was no statutory authority for a joint husband and wife case, as now exists under the Code. Because the Act provided for statutory vesting of title to property in the trustee, the individual cases of a husband and wife would routinely be consolidated after filing, to enable their trustee to reach tenancy by the entireties property.

TRAPPING THE UNWARY

In those days, one could rely on the absolute Act rule of law that the trustee of one spouse could not reach entireties property. So, it was possible to trap an unwary, sleeping creditor, holding a joint claim against husband and wife with equity in their entireties property, by filing for only one and discharging that obligation, before the creditor woke up and reacted. I accomplished that for clients more than once.

A diligent creditor holding a joint claim promptly appeared in the bankruptcy case, extended the time for the entry of the order of discharge, and promptly reduced his claim to judgment against both spouses in state court. The entry of the discharge order was devastating, as to the sleeping creditor. The bankrupt could plead his discharge in bankruptcy and overcome any later effort of that creditor (awake from his slumber) to enter judgment against him. Unable to enter judgment jointly against husband and wife, the creditor was unable to reach the entireties property to enforce his claim.

EXEMPTIONS

Then, as now, state law determined most exemptions. Maryland exemptions were modest: $500 in value of any designated property, including $100 in currency, clothing and other narrowly defined items. Such modest exemptions didn't really matter. Consumer property was rarely administered, even when values exceeded allowed exemptions.

THE FILING DOCUMENTS

To file a new case, four documents were required from the bankrupt: the Original Petition, the A and B Schedules, the Statement of Affairs, and the Statement of Executory Contracts. Each had to be signed and notarized. In a routine liquidation proceeding, the court expected all four documents to be completed and filed at the time that the new case was docketed. The clerk required an original and three duplicate original sets of the documents, a total of 16 individual documents. So, to properly complete documents acceptable for filing, the bankrupt and his notary each had to hand sign their names a total of 16 times – 32 times for the notary, in the case of a husband and wife filing.

As I recall, stamped notary seals were not in use, or not permitted, and embossing seals (applied with

The Small Law Office of the Day

I occupied an office with other attorneys in a five-office suite in the Tower Building. The monthly rent for my first office was $60; it cost $12 a month to park my car downtown. The annual premium for my first malpractice insurance policy was in the $50 range. My first secretary worked part time, three partial days a week, and I shared her with another attorney. My share of her weekly salary was $36. A young lawyer had to contain costs. Since demolished, the Tower Building was a landmark office building of the day. It had been built by William Randolph Hearst, the newspaper mogul, just before World War 1. His Baltimore newspaper, the Baltimore News American, was still being published.

The building location, at Baltimore Street and Guilford Avenue, was only two blocks from the courthouse. It was also located at the beginning of "the Block", the infamous, and world famous, five-block row of bars, strip-tease joints and burlesque theaters fronting on Baltimore Street, and then beginning its decline. (Blaze Starr, in all her glory, was still performing nightly.)

All common office expenses were shared, including the expenses for the yearly pocket parts that updated the Annotated Code of Maryland and the Maryland Digest. That was our entire library. Any other necessary legal research was done at the Bar Library.

We had typing stations for two secretaries. Manual typewriters were still commonplace, although electric had become the standard. The IBM Selectric was state of the art. Typing was accomplished with a rotating ball, which could be changed to alter type styles. I purchased my first typewriter, an electric Royal, used, at an Alex Cooper auction sale, for $150, a fraction of the cost of a new machine. Typewriter ribbons had to be replaced frequently. A new style of IBM ribbon (I think it was called "Correct Type") contained a white band, parallel to the black ink band, which could be struck over a typo to cover it up. That beat those little white strips, hand-held over the typo that served the same purpose. Otherwise, typing mistakes were removed with a rubber eraser, or with a little bottle of white fluid called "Wite- Out" which, when brushed onto the typo, would cover it up. Sort of. Each of these practices was cumbersome, and left telltale evidence of the mistake.

There were no computers, so there was no email or digital word processing. No fax transmissions either. Fax machines would not become ubiquitous until the 80's. But never mind, a private messenger service was readily available for hand deliveries, provided that the client could afford that luxury. One had to carefully watch such costs. These were bankruptcy clients, after all.

There was no postage meter. You licked a stamp to mail a letter. First class postage was four cents. Fountain pens, real ink in bottles, and desk blotters were commonplace.

My first telephone number was within the Saratoga exchange and, before the days of digital telephone switching, was dialed SA7-4440. No telephone area codes existed. There was no need to dial "1" when making that long distance telephone call – the telephone operator took care of all of the details for you, when she connected your long distance call (no sexism intended here, either– the telephone operator was always female.) But you had to be mindful of the cost of those long distance calls. They were so expensive. The AT&T long distance monopoly was still alive and well. Attorneys routinely tracked, and billed to their clients, the long distance telephone charges attributable to them.

Old timers of the day reminded young lawyers that the law was a learned profession, and exhorted them that client consultation over the telephone was unseemly. Clients should always be required to come to the office to receive their little pearls of wisdom.

Preparing the paperwork for a new bankruptcy filing in the solo law office of the day was much more challenging. I purchased the printed bankruptcy forms at Lucas Brothers, a stationer in downtown Baltimore. The forms were printed on legal size paper (8 ½" x 14"), as required by the court. All court filings then were on legal size paper. There were two printed form choices: individual pages, or carbon sets. Each had its own drawbacks.

Individual pages were much easier for the typist, but required duplication after the typing was completed. Xerox machines were coming into general use but were beyond the pocketbook of a solo practitioner. (You had to rent the machine, and also pay an additional per copy charge.) My office had a wet copy duplicating machine, with lights that came on as you hand-turned a crank, which caused an evil smelling liquid to emerge from a rubber bladder within the machine. (You soon learned to never, ever get that liquid on your clothing, during the frequent replacements of the liquid that were required.) The lights and the liquid would cause the image to be transferred, as copy paper was run through. But the copies came out damp and had to be laid out singly to dry.

When using the individual printed pages, you had to duplicate five sets of the typed documents: three for the court, one for the file and one for the client. So, if the original, typed documents comprised, say, 20 pages (the printed pages plus any additional exhibit pages), then sufficient surface area for the 100 duplicated, damp pages had to be found, on desks, chairs, tables, the floor, any flat surface, for drying. The pages ended up all over the office. After drying, these 100 pages, lying in disarray all about the office, then had to be assembled in proper sequence.

Or, you might choose the carbon sets, printed duplicate originals with snap out carbon paper in between each printed page. They eliminated copying and collating. Just pop a set in the typewriter. They were very convenient to use. Until there was a typing mistake. Try erasing a mistake on a multi-page carbon set inside a typewriter.

pressure, leaving an imprint within the paper) were mandatory. The clerk actually checked each signature and each embossed notary seal on all four duplicate original sets, before accepting a new case for filing.

The clerk also verified that the listing of each creditor in the A schedules included a complete address, as well as a proper (then, five-digit) zip code. Schedules with incomplete addresses, or with missing zip codes, would not be accepted for filing. Zip codes were only then coming into general use. For court mailings, the clerk typed names and addresses onto envelops, following the data in the A schedules. That was a very laborious task. Some years later, a mailing matrix was added to the list of required filing documents. The mailing matrix could be xeroxed onto peel-off mailing labels, greatly reducing the typing burden of the clerks.

FEES, FIRMS AND EXPENSES

Then, as now, the court reviewed fees of bankruptcy counsel. A typical fee for a consumer liquidation case was in the $250 range. That was consistent with the Suggested Fee Schedule published by the Bar Association of Baltimore City, until potential anti-trust considerations prompted its withdrawal.

Fees were oriented more toward the service provided, and less toward hourly rates. Hourly rates were the province of the big law firms. They rarely handled a bankruptcy case. In those few instances when they did, it would be the largest of commercial cases. The biggest local firms of the day had perhaps 30 partners. Hourly rates then were measured in double, not triple, digits.

UNSECURED CREDITORS OF THE DAY

Unsecured consumer credit was much less prevalent in those days. Credit card debt was unknown. The debts that were usually scheduled were department store accounts, medical bills and obligations to credit unions and small loan companies.

Small loan companies were the banks of the workingman. They provided different kinds of consumer loans, which earned different interest rates, depending upon risk and amount. They often took a chattel mortgage (security interest, after the 1964 adoption if the Uniform Commercial Code) on the household furniture of a borrower, to use as a bludgeon to compel repayment. Small loan interest rates were regulated by state law. There was one loan category at a statutorily-approved annual interest rate of 36% (unsecured, and under $500, as I recall.) Most of the interest rates were in the 12-18% range, not unlike the rates of the credit card companies of today. Rose Shanis Loans (a local company) and Household Finance Company (a national company) were typical, and were active locally.

Using a small loan company was not altogether unrespectable. An attorney in our office suite sometimes went to Rose Shanis when fees were slow in arriving (although he never told his wife about it). I believe American Express and Visa to have essentially taken over that small loan market.

When preparing a new consumer case, the scheduling of a few small loan balances, and at least half a dozen department store accounts, was typical. The list often included all of the members of what I used to call the "4-H Club": Hutzlers, Hochschild Kohn and Company, The Hecht Company and Hamburgers.

More than once, I noticed two consumer obligations that were frequently found together in the schedules: the first was an obligation to Petland, often arising just before Christmas, for the balance due on the purchase of the family pet. The second was the obligation to the *Sunpapers*, arising just a few weeks later, for the unpaid classified advertisement employed to sell the family pet.

Joseph O. Kaiser

REFEREE JOSEPH O. KAISER

Joe Kaiser, the bankruptcy referee in Maryland, was the first full-time bankruptcy judicial officer in this state. His predecessors sat only part time and were permitted a private law practice. In that era Joe was certainly the statewide bankruptcy authority. After the adoption of the U.C.C., he made it his business to become the resident authority in commercial transactions, as well. In addition to his work on the bench, Joe taught bankruptcy law at the University of Maryland School of Law.

Around 1970, Joe and his wife Polly happened to move into the garden-type apartment complex where my wife and I were then residing. More than once, "Uncle Joe" provided an ice cream treat to my young son, when the Good Humor truck arrived at the pool. As it happened, Joe had a neighbor above him who was noisy and who would not respond to Joe's entreaties to quiet down. So, each evening, he brought his gavel home from work and, when the neighbor got too noisy, he would stand on a chair and pound the ceiling with the gavel. It didn't work. They moved out at the end of their lease term.

In my mind's eye I can still picture Joe's carefully-penned signature. No reproduced signatures then. Fountain pen. Blue ink. Orders were hand signed. And

his were signed in a beautiful penmanship with carefully crafted letters written by a highly disciplined hand. His precise penmanship was symbolic of his approach to his job. Joe demanded exceedingly high standards of practice in his court. Most of the cases that were filed were consumer liquidation cases. Attorneys who rarely appeared in his court, did not understand bankruptcy practice, and did not take bankruptcy work very seriously, filed many of those cases. Then, as now, some cases were prosecuted *pro se*. As a result, the all-important A and B schedules and Statement of Affairs, so necessary to an understanding of the bankrupt's financial affairs, were often grossly inaccurate and incomplete. Given the slipshod work with which he frequently had to contend, it would have been very easy for him to give in, relax his standards and allow the practice before him to be less exacting. Surely his life would have been a lot easier. Joe would have none of it.

In those early days, my bankruptcy clients were usually consumers filing Bankruptcy Act liquidation cases, known as "straight bankruptcy" proceedings (as opposed to "chapter" proceedings) in the parlance of the Act. In such mundane and relatively unimportant cases, Joe nevertheless drummed into me, in case after case, the need for care, attention to detail, and overall excellence. What difference did it really make if my client failed to include his vacuum cleaner, or his watch, in his B schedules? It meant a great deal to him. Joe was notorious for catching debtors who failed to schedule these items, among others. Every case and the detail of every case was important.

As a young lawyer, one soon learned that Joe owned the courtroom. You had your place, and he had his. He had the knack of always finding that one detail that a young lawyer was prone to overlook. You did not overlook it a second time. You learned early on that you had better come to his courtroom well prepared, that you had better know the law and that you had better know what you were doing when you appeared before him. He demanded respect, and he demanded excellence. You crossed at your peril that fine line between appropriate and inappropriate exchanges with the court. And it didn't matter how well he knew you. He ran the show, and you had better remember it.

I soon learned to warn my clients, among many other things, to dress suitably – tie and jacket – for the meeting of creditors. You did not dress casually when appearing before Joe. Doing so was disrespectful to the court. If you did, one time, you would not do so again, if you had to return a second time. Early on, I came to respect him, as I came to understand and admire his work, the system over which he presided, and the standards that he unfailingly upheld.

My first trial before Joe involved a small loan company petitioning (no complaint necessary then) to be excluded from the discharge because the bankrupt had provided a false financial statement. Typically, the small loan would be made if the borrower presented a picture of stability – a job, a permanent residence and no more than two other small loans then outstanding. False financial statements were tolerated, if not encouraged, by the lender, in the anticipation of the possible bankruptcy of the borrower. I was young and green and inexperienced. I did not appreciate that the actual reliance of the petitioner on the financial statement was the key issue. Joe, of course, did. He took over the questioning of the petitioner's witness and saved the day. He saw to it that the result came out right for the bankrupt, notwithstanding the inexperience of his counsel.

Procedure under the Act required that the referee preside over all meetings of creditors. In the courtroom, sitting on the bench, with the bankrupt in the witness chair, the eagles in silent observation, Joe would carefully, systematically review the schedules, and question the bankrupt about the data. He was looking for anything unusual or inconsistent. He made no assumptions. If some debt was particularly large or otherwise unusual, Joe wanted to know all about it, determine what the bankrupt received in exchange for that obligation, and, if unscheduled, find out what had happened to that property. He required the bankrupt to trace the disposition of cash proceeds of recent loans. Never mind that the bankrupt did not have assets worth administering. Never mind that unscheduled property uncovered by him was of modest value, or exempt. The financial affairs of the bankrupt had to be examined, and the bankrupt had to be impressed with the solemnity of his action in the prosecution of his bankruptcy case. Joe did not go out of his way to be nice. He had a sober and gruff way of asking questions that made the bankrupt uncomfortable, and the atmosphere tense and foreboding. I can still hear his voice today– 25 years after his retirement.

For the bankrupt, an examination by Joe Kaiser was not a pleasant experience. It could vary from unpleasant to horrific, depending upon the quality of his schedules, his candor on the witness stand, and his attitude. More than one bankrupt left the witness chair with wet pants. Joe saw the discomfort of the bankrupt as a positive and salutary step in his financial rehabilitation. It was a rare client that ever wanted to file again, and revisit Joe for a second time. He knew

exactly what he was doing.

I once represented a lesbian in a straight bankruptcy case. I knew that to be so because, sitting there with her partner at our initial interview, reviewing assets and debts, and questioning her about the reason for her having a joint bank account with another person, she told me so. They were right up-front about their relationship, and were years ahead of their time. Their financial arrangement was to use a bank account for their joint living expenses, into which each deposited their salaries. The account was properly scheduled, its use properly explained, and the interest of the co-owner properly identified, as I knew Joe would expect. Still, I had misgivings about this case. I knew that Joe would focus on this unusual item, and carefully question my unmarried client in open court about the reason for her having a joint bank account with another person, and the reason for her money being applied to pay the living expenses of another person. The answers could prove embarrassing, for everyone, especially from such a candid client, eager to exhibit her gay pride. This was, after all, the 1960s. On the day of the meeting of creditors, the courtroom was packed. Fearing the worst, I thought it wise to provide the answers to his questions, before he asked them, privately, back in chambers, before the hearing began. When he got on the bench, his examination of this bankrupt was the fastest, and the most abbreviated, of any that I ever witnessed him conduct. His questions were framed in a way that give her candor no opportunity for expression.

Following his examination of the bankrupt, Joe would open up the questioning to any other interested person. Rarely did anyone care to participate, except occasionally a small loan company representative, eager to elicit testimony to support a false financial statement claim. Once in a while, a layperson, usually a friend or relative of the bankrupt, asked something not very relevant. Confused, and not at all sure why he was there, he had once made a loan to the bankrupt, received notice of the meeting of creditors, and so he now dutifully appeared in accordance with the invitation in the notice, and felt obliged to ask something. Joe would then ask for nominations for trustee. No response. He would then announce his willingness to treat the case as a no-asset case, conclude the hearing, and go on to the next consumer case. That next case, by the way, was sitting in the courtroom, quietly observing the proceedings, and growing ever more nervous.

Examining consumer bankrupts, reviewing their schedules and carefully taking notes of their testimony, on a daily basis, day after day, mundane, boring case after mundane, boring case was a substantial part of Joe's work. There were interesting commercial cases, of course. It was not all consumer straight bankruptcy. The occasional lesbian case might come along to enliven his day. But the drudgery, and the responsibility, of the ordinary consumer case would never go away. He did it for 23 years. Toward the end of his career he grew tired. It wore him down. No wonder.

Joe passed away in December 1999. During those early days, he was not only my judge, he was my mentor, and he was my friend. I cherish those days, and I remember him fondly.

MY PERSONAL ADVENTURE

Over the years my practice grew and matured. Non-bankruptcy work gave way to bankruptcy work. Business clients joined consumer clients; creditor clients joined debtor clients; landlord clients joined tenant clients. Cases under the Act gave way to cases under the Code. The bankruptcy principles learned in those early straight bankruptcy consumer cases and the lessons taught by Joe Kaiser, applied equally as well to the business related cases, and to the chapter cases, with much more money at stake, and then to cases under the Code.

A prestigious, corporate client favored me, for almost 30 years, with a flow of interesting creditor assignments, much of which came to be resolved in bankruptcy court. Chapter 11 plans were confirmed and consummated, and, with Gary Greenblatt, a like-minded and creative partner, the limits of the Code were tested and probed, including then unmapped and wide-open Chapter 13, after the Code became effective in 1979. It was all great fun.

Still, looking back, I think that I derived the most professional satisfaction from that lowly, derided and mundane consumer liquidation proceeding, filed in the earliest days of my practice. More than saving the business in Chapter 11, or the family farm in Chapter 12, or protecting the lien of the secured creditor, or recovering money for the unsecured creditor, or returning possession of the real property to the landlord, it was the human experience with the "little guy" consumer bankrupt, hurting and in pain, that I found most fulfilling and professionally rewarding. Touching that troubled life, impacting it, turning it around, affecting the fresh start, and then rejoicing with the client at his new beginning, was a wonderful and a satisfying thing to do. That was the most fun.

The Bankruptcy Court 25 Years Ago

BY MARK S. DEVAN

"He expected the debtors to dress appropriately, which included a tie for men."

Mark S. Devan

In 1978, the Bankruptcy Court in Baltimore was quite different from today. The Clerk's office was one small room on the second floor of the Garmatz Courthouse. I believe there were only four people processing the paperwork.

The Judge's Chambers for the sole Judge, the Honorable Joseph O. Kaiser, were across the hall from the Clerk's office. Even being called "Judge" was new, as "Bankruptcy Referee" was the previous title. Judge Kaiser had a secretary named Karen Ballard, and the acting Clerk of Court was Erma Jane Hagert, who is still with the Court today. They were also in chambers.

Before I went to work for Judge Kaiser as a law student intern at the University of Maryland Law School, the Judge had no full time law clerk, and I was only part-time for school credit. We had no library. To do research we had to use the U.S. Attorney's Library. The Bankruptcy Courtroom was actually a Magistrate Judge's courtroom that was assigned to the Bankruptcy Court.

Under the Bankruptcy Act, the Judge conducted all the meetings of creditors. Judge Kaiser was a stickler. He expected the debtors to dress appropriately, which included a tie for men. The clerk's office kept a light colored tie and a dark colored tie for those who needed them. The best story I heard was from Richard Moore, an attorney who knew Judge Kaiser well. His client appeared in his office before the meeting of creditors in a Mickey Mouse T-shirt. There was no time to change, so Mr. Moore put a jacket and a tie on his client and zipped up the jacket so only the tie was showing. In court, Judge Kaiser called Mr. Moore to the bench and told him, "Nice try!" The Judge did, however, conduct the meeting — Judge Kaiser had a very dry sense of humor and even if he told a joke he had a very slight smile.

Judge Kaiser was also a stickler for the accuracy of the information filed by the debtors. His meetings of creditors could become a cross-examination when he received less than satisfactory answers from the debtors. He knew the bankruptcy law thoroughly and his research requests were always on State law issues as they applied in the bankruptcy case.

In 1978, when Congress enacted the Bankruptcy Code, Judge Kaiser announced his retirement. He was not ready to start over again. Judge Harvey Lebowitz was appointed. The Bankruptcy Court started growing, and growing, to what we have now.

My First Bankruptcy Trial

BY DEBORAH HUNT DEVAN

It is the summer of 1976. The country is celebrating its bicentennial year and the tall ships are swinging at anchor in the Inner Harbor. The mavens of the law are busy at work, and I am just beginning to learn my craft as an attorney newly admitted to the Bar. Joseph O. Kaiser has recently been elevated from a Referee in Bankruptcy to a Bankruptcy Judge and is presiding over cases in the Bankruptcy Court sitting in Baltimore.[1]

Among the cases before Judge Kaiser is the Chapter XI case of a husband and wife from Westernport, Garrett County, Maryland, which today would be a Family Farmer proceeding. It is among my first cases and certainly my first individual Chapter XI case. Money is tight for the debtors, as it always is, and their mortgage lender declares a default under the mortgage and files a request for relief from the Rule 11-44 Stay seeking relief to foreclose on the family farm.

I study my copy of the 1976 Collier Pamphlet Edition of the Bankruptcy Act and Rules (with Explanatory Comment), edited by Asa Herzog and just 700 pages total, for a clue about how to respond to the Request.[2] We file our opposition and, eventually, a hearing is set. I arrive at the courtroom early that day, armed with an arsenal of documents and law books. However, I am not the first lawyer to arrive, having been preceded by counsel for the mortgage lender.

I deposit my arsenal and go over to introduce myself to my opponent who introduces himself as "Steve Derby." He is a graduate of Harvard Law School and a partner with many years of trial experience with the venerable firm of Piper and Marbury. Just my luck! I have never tried a case in the Bankruptcy Court, the family farm is at stake, and I draw Clarence Darrow!

"Well, Mr. Derby," I say, "I hope that you will not be too hard on me today and that you will excuse any mistakes that I make, but this is my first case in the Bankruptcy Court."

He gives me a smile and says, "Miss Hunt, I hope that you will do the same for me as this is the first case that *I* have ever tried in a Bankruptcy Court. While I have been a trial lawyer for many years, I have just begun to handle bankruptcy matters."

We each went into battle that day for our respective clients. Need I tell you who won?

Deborah Hunt Devan

[1] In 1973 the Supreme Court acknowledged the increasingly judicial nature of the referees' work when it prescribed a set of bankruptcy rules that employed the term "bankruptcy judge" interchangeably with "referee."

[2] That volume still sits on my shelf in my office.

Memorial Resolution of The United States Bankruptcy Court for the District of Maryland

In Tribute To The Honorable Joseph O. Kaiser (1914-1999)

United States Bankruptcy Judge for the District of Maryland (1956-1979)

Joseph O. Kaiser

BE IT REMEMBERED THAT The Honorable JOSEPH OTTO KAISER was born in Baltimore, Maryland, on April 4, 1914. He received his bachelor of arts degree from the Johns Hopkins University in 1933. He was awarded a bachelor of laws degree from the University of Maryland School of Law in 1936, where he graduated with honors and was a member of the Order of the Coif. He was admitted to the Bar of Maryland on October 6, 1936. He served as Deputy U.S. Marshal for the District of Maryland from July 7, 1936 until November 30, 1936. Judge Kaiser served as law clerk to the Honorable W. Calvin Chesnut, U.S. District Judge for the District of Maryland, from November 30, 1936, until September, 1938. From September, 1938, until December, 1955, he was engaged in the private practice of law with Thomas Kenney, Esquire, in the law firm of Kenney and Kaiser. He was Instructor of Practice and Pleading and Creditors' Rights at the University of Maryland School of Law from 1939 until the mid-1970s.

Judge Kaiser's years at the Bar were interrupted by his military service in two wars. In World War II, he served in the U.S. Army from April 29, 1941 to March 14, 1946, with the 78th Infantry Division, where he rose to the rank of Major. He was the recipient of the Bronze Star with two Oak Leaf Clusters for valor and the Combat Infantry Badge, which he earned during the Battle of the Bulge in 1944-45. He also served in the Korean War with the 10th Corps, U.S. Army, from June 12, 1951 to April 1, 1953.

Joseph O. Kaiser was appointed by the Judges of the U.S. District Court for the District of Maryland as the first full-time U.S. Bankruptcy Referee (later U.S. Bankruptcy Judge) for the District of Maryland, effective January 1, 1956, at the age of 41, and served until his retirement from the bench effective May 31, 1979. He died at Sinai Hospital, Baltimore, Maryland, on December 9, 1999, survived by his wife, Pauline Rifkin Kaiser, his son, Jeffrey Ronald, and his grandson, Craig Kaiser Ronald.

WHEREAS Judge Joseph O. Kaiser rendered faithful service as U.S. Bankruptcy Referee and later as U.S. Bankruptcy Judge for the District of Maryland for 23 years, and

WHEREAS Judge Joseph O. Kaiser departed this life on December 9, 1999, full of honors and years,

NOW THEREFORE the undersigned Judges of the United States Bankruptcy Court for the District of Maryland do hereby adopt this Resolution in memory of the said Judge Joseph O. Kaiser, to wit:

BE IT RESOLVED, That the Judges of this Court pay tribute to the memory of the late Judge Joseph O. Kaiser and to his dedicated service to the administration of justice in the District of Maryland, his many contributions to the legal profession of the State of Maryland, and his patriotic service to the United States of America.

BY THE JUDGES OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MARYLAND

(Signed)
Chief Judge Paul Mannes, Judge James F. Schneider, Judge E. Stephen Derby, Judge Duncan W. Keir

GIVEN AT THE CITY OF BALTIMORE IN THE DISTRICT OF MARYLAND
this 24th day of March in the Year 2000, under the hand and seal of Richard C. Donovan, Clerk of the United States Bankruptcy Court for the District of Maryland

"How We Got the Bankruptcy Reform Act of 1978"

Remarks of the Honorable Joe Lee (Bankr. D. Ky.) At the National Conference of Bankruptcy Judges, San Diego, California October 2004

Let's start with 1964. That was the first year in which our conference held its annual meeting in San Diego. We met at the Kona Kai Club and Inn on Shelter Island not far from here.

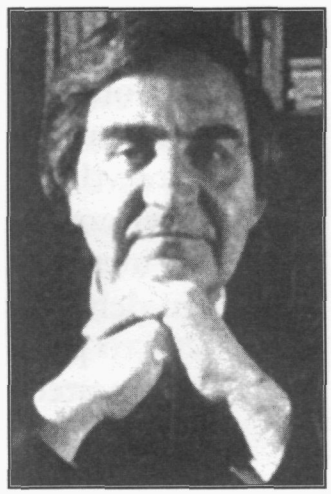
Earlier that year, on March 23-27, 1964, the very first seminar for newly appointed referees in bankruptcy was held at the Gramercy Inn, Washington, D.C. Those in attendance included Referees Clive Bare of Knoxville, Tennessee, Dan Cowans of San Jose, California, Conrad Cyr of Bangor, Maine, Arthur Molle of Houston, Texas, and Robert Morton of Wichita, Kansas, all of whom played an important role in securing enactment of bankruptcy reform legislation as we know it.[1]

The seminar opened with greetings from Chief Justice Earl Warren, who then departed for a court session and a meeting later in the day of the Presidential commission investigating the assassination of President Kennedy, the Warren Commission, which he chaired.

On October 3, 1964, the day before commencement of our October 4-8, 1964 San Diego meeting, Title 28 U.S.C. § 2075, authorizing the Supreme Court to prescribe general rules governing practice and procedure under the Bankruptcy Act was enacted. As originally enacted this law provided that all provisions of the Bankruptcy Act inconsistent with the rules would no longer be of any force or effect once the rules took effect. This was important because the Bankruptcy Act contained many procedural provisions interspersed with substantive provisions. The Advisory Committee on Rules had been established in 1960. It may help you understand the problem if you realize it took the Committee from 1960 until 1973-74 to excise procedural provisions from the Act and transfer those provisions to bankruptcy rules. I call your attention to the fact that the bankruptcy legislation pending in Congress has numerous procedural provisions interspersed with substantive law. As Yogi Berra might say it's facing deja vu all over again, unless we are able to stop this legislation.

The panelists on a Uniform Commercial Code program at the 1964 Annual Meeting included Harold Marsh, whom President Nixon later appointed as Chairman of the Commission on Bankruptcy Laws of the United States, Professor Larry King, who was a visiting professor at the University of California, Berkeley, and George Treister, who is still our mentor after all these years.

By the mid-1960's the Judicial Conference and Congress had become concerned about the increase in personal bankruptcies since the end of World War II. The reason for the increase then and now was obvious. Personal bankruptcy filings were merely increasing in tandem with the growth of consumer credit. In fiscal 1964 there were 155,209 non-business bankruptcy filings. Imagine that being a cause for concern.



Joe Lee

Nevertheless, this concern generated three important studies relative to bankruptcy.

On May 2, 1965 the Brookings Institution announced that, at the request of the Judicial Conference of the United States, Brookings would conduct a study of the nation's bankruptcy system. The study was to be funded by a grant from the Ford Foundation.

On May 29, 1968, President Johnson signed the Consumer Credit Protection Act of 1968, better known as the Truth-in-Lending Act. Title IV of the Act provided for creation of a National Commission on Consumer Finance to study and make recommendations with respect to Government supervision and regulation of consumer credit.

On July 24, 1970, Senate Joint Resolution 88, 91st Congress was signed into law (Pub.L. 91-354 July 24, 1970). The resolution created The Commission on Bankruptcy Laws of the United States "to study, analyze, evaluate, and recommend changes in the Bankruptcy Act."

Our conference provided input to all of these studies. This amounted to little more than sipping tea at Brookings with Marjorie J. Girth, the co-author with David Stanley of the Brookings study.

We were more involved with the Bankruptcy and Consumer Finance study commissions. These two commissions were housed one floor apart in the old CIA Building at 1016 16th Street, N.W., Washington. We were personally acquainted with some of the members, staff, and advisors of the Bankruptcy Commission. When we visited the Bankruptcy Commission we often visited with

Robert L. Meade, Executive Director of the National Commission on Consumer Finance.

At about the time the Bankruptcy Commission was funded, staffed and ready to begin work in July of 1971, I submitted to the Commission through Senator Marlow Cook of Kentucky, a member of the Commission, a bankruptcy study plan. This study plan was published by the Senate Judiciary Committee as a Committee Print in November of 1971.

"... recognized the relationship between the growth of consumer credit and the increase in debtors unable to pay, but suggested there was no cause for alarm."

Joe Lee

Judge Robert Morton of Wichita, Kansas, whom we honor at this meeting, was chairman of our liaison committee with the Bankruptcy Commission. The committee members in addition to Judge Morton, were Judges Conrad Cyr, Homer Drake, Arthur Moller, and myself. Bob Morton worked us very hard. He solicited input from our membership. The committee met on four or five occasions for two or three days at a time to formulate responses to Commission inquiries concerning the conference's position with respect to exemptions, jurisdiction, discharge, chapter XIII, and later with respect to administrative agency involvement and a single chapter for reorganizations. All of us testified before the Commission on these matters at a hearing held November 11, 1972 in the U.S. Courthouse in Chicago in Judge Hubert Will's courtroom.[2] He was a member of the commission.

Brookings published its study in 1971. The study recommended a wholesale transfer of the bankruptcy system (except for railroad reorganization cases) to an independent administrative agency in the Executive Branch of government. The agency would help debtors prepare petitions, hearing examiners would rule on contested matters and adversarial proceedings. According to Brookings the administrative agency would be humane and brisk.[3]

Brookings did make a couple of important findings that are being ignored by the zealots in Congress pursuing means testing to determine eligibility for bankruptcy relief. Brookings concluded (1) it was impossible to tell whether the positive effect on the economy of forcing debtors to pay old debt would outweigh the effect of reduced spending by such debtors during the period of repayment, and (2) bankruptcies probably increase interest rates only for low income workers who are poor credit risks but do not increase interest rates for the public in general. These findings refute the argument of proponents of bankruptcy reform that compulsory chapter 13 will somehow benefit the economy and American families in general.

The National Commission on Consumer Finance filed its report with Congress in December of 1972. The Commission did not recommend compulsory chapter XIII. It did recommend that chapter XIII courts be permitted to alter or modify the rights of secured creditors by a plan that adequately protected the value of the creditor's collateral. It recommended uniformity of exemptions in personal bankruptcy cases. A Consumer Finance Commission recommendation is the source of the recommendation of the Bankruptcy Commission that a nonpurchase money-security interest in household goods should be unenforceable. The National Commission on Consumer Finance recognized the relationship between the growth of consumer credit and the increase in debtors unable to pay, but suggested there was no cause for alarm.[4]

The Commission on Bankruptcy Laws of the United States forwarded its report to Congress on July 30, 1973. The Commission recommended creation of a Bankruptcy Administration in the Executive Branch to handle all matters in proceedings under the Act which do not involve litigation. The Administration was to have authority in all bankruptcy cases except railroad reorganizations. Disputes were to be resolved by hearing examiners with right of appeal to the bankruptcy court. Judges of the bankruptcy court were to be appointed by the President for 15-year terms. Their territorial jurisdiction would no longer be conterminous with district or circuit court boundaries. Appeals from decisions of the bankruptcy court would go initially to the nearest district court. The Bankruptcy Commission bought largely into the Brookings solution.

The 1973 annual meeting of the National Conference of Bankruptcy Judges was held October 31 - November 3, 1973 in Atlanta. Prior to the annual meeting the liaison committee with the Commission met in Atlanta on August 12-14, 1973. We had received Part I of the Commission Report. The Commission Bill, Part II of the Report, was being printed and was not yet available.

The Atlanta meeting was an assembly of national leaders who would determine the destiny of the present Bankruptcy Code. Jimmy Carter, Governor of

Georgia, soon to be President, spoke at a luncheon meeting. Griffin Bell, a judge on the Fifth Circuit Court of Appeals, who would later become Attorney General in the Carter administration, was a guest at the meeting.

The Bankruptcy Commission Report and the Commission Bill were the primary topics of discussion at the educational programs at the Atlanta meeting. Panelists included Harold Marsh, Chairman of the Commission, Professor Charles Seligson, Member of the Commission, Professor Frank Kennedy, Director, and Walter Ray Phillips, Gerald K. Smith, and Robert Viles, Associate Directors, Professors Vern Countryman and Lawrence P. King, and J. Ronald Trost, Advisors to the Commission. I think it's fair to state the Commission proposals were not well received by those in attendance at the meeting.

I succeeded Homer Drake as President of the NCBJ at the Atlanta meeting. Our new Committee on Legislation consisting of Homer Drake, Chairman, Bob Morton, John Copenhaver, Conrad Cyr, Clive Bare, Dan Cowans, Arthur Moller, and myself had much work to do.

At a board meeting, acting on the theory you shouldn't object to legislation without offering an alternative, we decided to draft our own bill. The board authorized expenditures for this purpose.[5]

The Commission Bill had been introduced in the House and Senate on October 8, 1973. Thereafter a one day hearing was held on the bill by a House Judiciary subcommittee in December of 1973.

Congress was otherwise occupied. You may recall the Watergate break-in occurred in the summer of 1972. In early 1973 the Senate Watergate hearings by a committee chaired by Senator Sam Ervin of North Carolina got underway. Thereafter, impeachment proceedings by the House Judiciary Committee occupied much of the 1974 Congressional session. President Nixon resigned on August 9, 1974, Gerald Ford, who had replaced the ousted Spiro Agnew as Vice-President, became President.

During these distractions we worked diligently on our bill. The Committee on Legislation met on several occasions two or three days at a time, we went over the Commission Bill line-by-line, noting our agreement or disagreement with Commission proposals, and adopting our own solutions.

I was the principal draftsman of the so-called Judges Bill. Our attorney, Murray Drabkin, provided oversight and advice. Murray would fly into Lexington once or twice a month to review my work. We often worked until the wee hours of the morning to accommodate his return flight schedule.

By the time of the mid-year board meeting held March 16, 1974 at the Langford Resort Hotel, Winter Park, Florida, we had a check list of recommendations for the board to review.

Then we completed a draft version of our bill for consideration of the membership at a special membership meeting held April 24, 1974 at the O'Hare International Hotel, Chicago. All members were provided a draft copy of the bill prior to the Chicago meeting. Forty-three members, plus Murray Drabkin were present at the meeting.

"There were prolonged hearings before House and Senate Judiciary subcommittees in 1975 and 1976."

Joe Lee

The majority in attendance voted to modify the bill to require the meeting of creditors to be held before the bankruptcy judge and to permit a majority of creditors at such meeting to elect a trustee to succeed the panel trustee. Some in attendance, such as John Dilenschneider of Columbus, Ohio, had prepared detailed suggestions for improvement of the working of certain sections of the bill. John wanted to extend the jurisdiction of the bankruptcy court to include Truth-in-Lending Act and Fair Credit Reporting Act and odometer violations.

Thereafter our bill was perfected and was ready for introduction in Congress. Homer Drake and Murray Drabkin and others persuaded the senators and congressmen who had served on the Bankruptcy Commission and who had introduced the Commission bill to introduce our bill as well. Accordingly, in September of 1974 our bill was introduced in the Senate by Senators Burdick and Cook and in the House by Congressmen Edwards and Wiggins.

Thereafter, at hearings before the House and Senate Judiciary subcommittees our bill and the Commission Bill were considered concurrently.

There were prolonged hearings before House and Senate Judiciary subcommittees in 1975 and 1976. Eventually the House Judiciary Committee came up with a bill proposing an Article III bankruptcy court with judges appointed by the President to serve during good behavior. The Senate bill proposed appointment of bankruptcy judges by the courts of appeals. The jurisdiction of the court under the Senate bill was more restrictive.

When the House bill came to the floor for a vote in 1977, a couple of House Judiciary Committee members, Danielson of California and Railsback of Illinois, offered an amendment. The Danielson-Railsback amendment. Further hearings on the bill were held in December of 1977 by the House subcommittee which reiterated its support for an Article III court. The bill went back to the floor. This time the Danielson-Railsback amendment was defeated and the House passed an Article III bill.

Meanwhile, the Senate passed its bill.

A little noted fact is at conference in order to elevate the status of the bankruptcy court the conferees agreed to make the bankruptcy court an adjunct of the courts of appeals. Bankruptcy jurisdiction would be vested in the courts of appeals and was to pass through to and be exercised by the adjunct bankruptcy courts. The bill also provided for Presidential appointment of bankruptcy judges for 14-year terms.

"... the conferees agreed to make the bankruptcy court an adjunct of the courts of appeals."

Joe Lee

Senator Strom Thurmond put a hold on the bill at the request of Chief Justice Warren Burger. The Chief Justice wanted the appointment power to remain in the courts. Ultimately, the bankruptcy courts were unhitched from the courts of appeals and reattached as adjuncts of the district courts. We were granted a fold-in for an approximately 6-year period until March of 1984, at which time Presidential appointments were to commence.

The jurisdiction of the bankruptcy court as set out in title 28 U.S.C. § 1471 was declared unconstitutional in June of 1982 in the *Northern Pipeline* case. The Supreme Court, by extension of its mandate, gave Congress until near the end of 1982 to enact corrective legislation. The House held firm for an Article III bankruptcy court. The congressional session ended without action.

From about December 25, 1982 until July 10, 1984, the bankruptcy courts operated under the so-called Model Rule.

In the next Congress, House Judiciary Committee Chairman Peter Rodino introduced H.R. 3, an Article III bill. He refused to consider amendments to title 11 sought by the consumer finance industry. He said those amendments could be considered after action on his amendments to title 28 providing for appointment of life-tenured bankruptcy judges.

Rodino's game plan was foiled by the decision of the Supreme Court in the *Bildisco* case, 104 S.Ct. 1188, February 22, 1984, holding that a collective bargaining agreement was an executory contract subject to rejection by a debtor-in-possession in a chapter11 case. The labor unions demanded amendments to chapter 11 of title 11 to require more stringent rules for rejection. Rodino relented, permitting amendments to chapter 11 and some of the amendments sought by the consumer finance industry.

When the bill went to the floor the Kastenmeier Amendment providing for the present system of appointment of bankruptcy judges prevailed.

The Kastenmeier Amendment surfaced only a couple of weeks before the vote and was never considered by the House Judiciary Committee.

Caveat: Whether or not the status of the bankruptcy court appointment system is settled under Article III, we may still be at risk under the Appointments Clause, U.S. Constitution, Article 2, § 2, Cl. 2. *See Morrison v. Olson*, 108 S.Ct. 2597 (Jan. 29, 1988), which sets out the criteria for distinguishing between principal and inferior officers of the United States.

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[1] Others, including Homer Drake, David Kahn, Hal Bonney, Ralph Kelley, and David Kline, soon joined in this endeavor.

[2] Judge Lawrence Miller of Chicago testified on behalf of the Committee on Bankruptcies and Reorganization of the Chicago Bar Association.

[3] On behalf of our conference I wrote a response to the Brookings study. I pointed out among other things that the Ash Commission (the President's Advisory Counsel on Executive Organization) in its report published in January 1971 had concluded that such independent administrative agencies were unresponsive, lacked accountability, lacked oversight, and lacked Congressional oversight and funding. They were occasionally humane but never brisk.

[4] In a submission to the more recent National Bankruptcy Review Commissions which filed its report with Congress October 20, 1997, I pointed out that in 1977 (before enactment of the present Code) there were .74 (less than one) individual bankruptcies for every million dollars of consumer credit outstanding, and 20 years later, in 1997, there were .73 such bankruptcies for every million dollars of consumer credit outstanding.

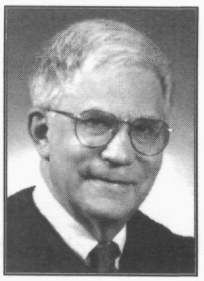
[5] We also finalized two proposals carried forward from the 1972 annual meeting in Boston. We changed the name of our conference to National Conference of Bankruptcy Judges. We changed the exempt status of the conference from § 501(c)(3) to § 501(c)(6) of the Internal Revenue Code in order to engage more freely in legislative activities.

Judges of the United States Bankruptcy Court for the District of Maryland

1979-2004

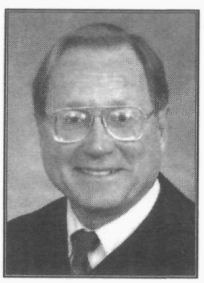
GLENN J. GOLDBURN (1929-)
November 2, 1972-July 30, 1981

HARVEY M. LEBOWITZ (1929-1995)
June 1, 1979-January 31, 1982

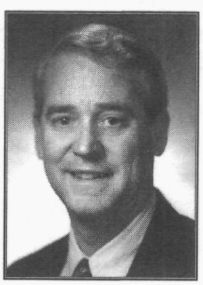


PAUL MANNES (1933-)
December 30, 1981-
Chief Judge, May 15, 1985-November 1, 2001

JAMES F. SCHNEIDER (1947-)
February 1, 1982-
Chief Judge, November 2, 2001-



E. STEPHEN DERBY (1938-)
December 9, 1987-January 30, 2004
Recalled, February 1, 2004-



DUNCAN W. KEIR (1946-)
November 12, 1993-

NANCY V. ALQUIST (1953-)
September 20, 2004-

Clerks
of the United States Bankruptcy Court for the District of Maryland
1979-2004

MICHAEL KOSTISHAK (1931 -)
Clerk of Court 1979 - 1992

Michael Kostishak was the first Clerk of the Bankruptcy Court for the District of Maryland under the Bankruptcy Reform Act of 1978. After a lengthy government career including military and civilian positions in the Army, Navy and U.S. Coast Guard, Mr. Kostishak joined the judiciary at the Administrative Office of the United States Courts in 1972 as a budget analyst. He brought to the Court a thorough knowledge of government budget process, keen insight to the inner workings of the A.O., along with a law degree and helped the court develop the means to administer cases during this first formative decade of existence.

JOHN H. WINKLER, SR. (1937 -)
Acting Clerk 1992-1993, 1996

John Winkler began his career in court administration in 1967 with the Court of Common Pleas in Baltimore. He joined the newly formed United States Bankruptcy Court for the District of Maryland in November 1979. Mr. Winkler served as courtroom deputy to Judge Harvey Lebowitz and then to Judge James F. Schneider until his appointment as Chief Deputy Clerk in 1985. He served as Acting Clerk twice for a significant amount of time while the Court recruited a new Clerk. His oversight of the Clerk's office during the transition between Clerks was critical to the continuity of operations.

FRANK L. MONGE (1949 -)

Clerk of Court 1993 - 1996

Frank Monge came to the Maryland Bankruptcy Court in 1993 from the United States District Court for the Eastern District of Texas, where he had served as Chief Deputy since 1985. Mr. Monge began his career in the federal courts in the United States Bankruptcy Court for the Northern District of Illinois from 1975 to 1985, rising to the position of Chief Deputy. After assisting our court with the relocation from our Rockville office to the newly-opened Greenbelt courthouse, Mr. Monge left to serve as the Clerk of the United States District Court for the District of Maryland in 1996. He later rejoined the Bankruptcy system as Clerk of the U. S. Bankruptcy Court for the Northern District of Alabama until his retirement from government service in 2001.

RICHARD C. DONOVAN (1952 -)

Clerk of Court 1996 - 2001

Richard Donovan began his federal civilian career with the Internal Revenue Service in California. After receiving his Masters in Public Administration from the University of San Francisco, he worked in the corporate headquarters of a retail conglomerate. Mr. Donovan again joined the ranks of public service at the Sacramento Superior Court from 1990-1996, managing the Traffic & Small Claims Court and Juvenile Court.

As Clerk of the Bankruptcy Court, he was instrumental in building a structure and culture of developing staff and other court managers and served on numerous national committees whose focus was to improve the leadership and management of the federal courts. In 2001, he was appointed Clerk of the United States Court of Appeals for the First Circuit. His leadership and motivating vision positioned the Bankruptcy Court well for the coming transition to electronic filing.

MARK D. SAMMONS (1956 -)

Clerk of Court 2001 -

After receiving his bachelors in Business Administration from Virginia Tech, Mark Sammons began his career in 1978, working at the Administrative Office of the U. S. Courts providing support to the committees of the Judicial Conference. In 1985, he joined the federal courts with his appointment as a division manager in the United States Bankruptcy Court for the Middle District of Florida. In 1987, he was appointed Chief Deputy of the U. S. Bankruptcy Court for the Middle of District of Georgia, followed in 1990 by his appointment as Chief Deputy at the Eastern District of Virginia. In 1997, Richard C. Donovan appointed him Chief Deputy of the Maryland Bankruptcy Court. Mr. Sammons succeeded Richard Donovan as Clerk in January 2002, after a brief stint as Acting Clerk. During his tenure as Clerk, Mr. Sammons directed the transition to electronic case filing.

Reminiscing the Code

(Or, "Life With Harvey")

BY MARC R. KIVITZ

Marc R. Kivitz

The Summer sun shone brightly as my friends and I ate lunch in Hopkins Plaza on Tuesday, July 24, 1979, and with trepidation exchanged answers to that morning's essay questions as we sat for the Maryland Bar Exam in the room above the garage of what is now the Baltimore Arena. We had been given Friday, October 5, as the target date for the issuance of exam results before we returned on July 25 for the Multi-State Bar Exam multiple choice portion of the test. Dean Lois Wehr of the University of Maryland School of Law had suggested that I apply for a clerkship with the newly-formed United States Bankruptcy Court, and although after so many years of school I eagerly anticipated beginning the actual practice of law, Dean Wehr convinced me that researching on the forefront of a new law would be a challenging and rewarding experience; so, I applied. I interviewed with Judge Glenn J. Goldburn on Monday, July 30, 1979, who was concerned about my relocating from Baltimore (and my then lack of a driver's license due to my vision), and he recommended that I apply for the law clerk position in Baltimore.

I interviewed with Judge Lebowitz on Tuesday, August 7, 1979, during which he expressed his concern for my health and his awareness that in 1975 I had undergone several cancer surgeries – the FBI having done its usual excellent job in ferreting out what was supposed to have been private medical information. The Judge seemed assured by my response that I had subsequently graduated with honors from both college and law school, and took my application under advisement. During the next week, I vacationed in San Francisco with college friends prior to beginning my associateship after Labor Day with a Baltimore law firm on September 4, 1979. The following day, September 5, 1979, Ms. Naomi Hopkins contacted me and asked if I could return to the Judge's Chambers that afternoon for what I anticipated would be a second interview. Unexpectedly, the Judge offered me the position as his law clerk, which I accepted (and then reluctantly informed the law firm of my decision). On September 6, 1979, in his Chambers on the second floor of the United States Courthouse in Baltimore, the Honorable Harvey M. Lebowitz, Judge, United States Bankruptcy Court for the District of Maryland, right hand raised, administered to me the Oath to defend the Constitution of the United States.

The bar exam results did not arrive as promised on Friday, October 5; nor was it in Saturday's mail, and there was no mail delivery on Monday, October 8, Columbus Day, a federal holiday. When on Tuesday, October 9 one of the U.S. District Court law clerks called Annapolis to inquire about several names on the Court of Appeals' Order *Nisi*, there was elation and commotion in the Bankruptcy Court's Chambers. Judge Lebowitz emerged from his office, and I informed him that I had passed the bar. His Honor congratulated me, shook my hand, and responded that it was a good thing because I couldn't be his law clerk without it – a small fact he must have forgotten to mention during my interview, and then he abruptly turned and went back into his office. My Certificate of Admission to the U.S. District Court dated November 16, 1979 is signed by Paul R. Schlitz, Clerk, and Wesley L. Booze, Jr., Deputy Clerk. With more curly hair than I have today, I stand in the back row of a photograph that proudly hangs in my office of the Law Clerks as newly admitted attorneys at an admissions ceremony to which Judge Lebowitz was not invited, and I regret that my vocal opposition to that oversight was not more persuasive.

The September and October, 1979 docket was replete with Bankruptcy Act cases. My first charge from the Judge was to read the Act, the Rules of Procedure for the Act and the new Code which would take effect on October 1, 1979 – cold and stark words without any facts to apply to the law. The Judge and I discussed at great length how the Code differed from the Act – my working knowledge of the Act being necessary to assist in the adjudication of these old cases and to serve as either precedent for the decisions under the Code or to interpret the Code as varying from decisions under the Act. There were particular sections of the Code which would require interpretation in order to instruct as to their practical application, and I was to examine cases as they were filed which might raise issues highlighting the distinctions of the new Code. I attempted to keep pace with those matters that would come before our Court for decision; it was possible at this early stage to read almost all of the pleadings, complaints, answers and discovery, that were filed with the Court (other than the bankruptcy schedules that commenced cases, which were only reviewed as issues arose).

We sometimes worked seven days a week to accommodate the influx of Code cases. It was just the three of us at first, the Judge, Naomi, his judicial assistant, who had accompanied him from Gordon, Feinblatt, and I, and three Court Clerks, Madeline Cieselska, Margaret Snapp and Erma Jane Hagert, performing all of the functions now carried on by many more. At the outset, I maintained the Court's calendar, contacting counsel to determine the anticipated length of their hearings and scheduling them. We held Court in Courtroom 2-B with hearings on Monday through Friday. On motions for relief from the automatic stay, in order to accommodate the thirty-day hearing requirement of 11 U.S.C. § 362(e), I would telephone movant's counsel requesting a waiver of this time requirement, suggesting politely that their argument at least be novel or entertaining to warrant our attendance, and if not, I scheduled the hearing for Saturday morning, cajoling counsel to reconsider the decision. Michael Kostishak (who would later sign my Certificate of Admission to the Bankruptcy Court on December 12, 1980), joined us later as the Clerk of the Court, as would John Winkler, as Courtroom Deputy, who thankfully took over this function. We worked late into the evenings; the air conditioning and heating systems often shutting off at 5:00 p.m. without regard to our presence. The third floor of the Courthouse above us remained vacant and had not as yet been subdivided into office space, such that on one remarkable evening the Judge sent me upstairs to investigate the disturbing sound overhead of a herd of rampaging elephants which turned out to be a federal employee's calisthenics class. On Sundays we wrote opinions; Judge Lebowitz coming into Chambers wearing his V-neck sweater with red and blue stripe at the collar after a morning tennis session – truly a labor of love – both the game and the job for both of us.

The Code had no Rules; these would not be promulgated by the Supreme Court until several months later. We had the Suggested Interim Bankruptcy Rules. There was no rule of procedure governing the taking of an appeal from the Bankruptcy Court to the U.S. District Court; I drafted one, modeling the procedure after 28 U.S.C. §§ 1291, 1292. When we discovered that the suggested interim rules provided that both adversary proceedings and contested matters be assigned separate numbers, we spent days pulling out each Code case, reviewing it and separating each such pleading into a separate file in order to accommodate this requirement and assign it a motion or adversary number. The benefit from this project was enormous, because prior to that procedure there was just one court file, bulging with every paper filed and containing not only the bankruptcy schedules and statement of financial affairs, but every application, notice, complaint, motion, answer, interrogatory, document request, deposition,

"We sometimes worked seven days a week to accommodate the influx of Code cases."

Marc R. Kivitz

"We had no computers, no e-mail, no Internet; a compact disk was something thrown in a field event at the Olympics."

Marc R. Kivitz

transcript, discovery response, orders and opinions, with nothing, except perhaps a caption, to distinguish what papers related to any other. We developed a color-coded system, using pins of different shades to link related pleadings. For every file folder, we created a duplicate Judge's file (dubbed "Marc's Files") in which were handwritten summaries of issues, research, and comments for the Court's consideration when the Judge reviewed the files for the next day's matters.

We had no computers, no e-mail, no Internet; a compact disk was something thrown in a field event at the Olympics. There were no cell phones, no fax machines, a DVD was a microbe examined at Atlanta's Center for Disease Control. We did have typewriters, and if fortunate, there was a backspace key that would erase a typo. Our most sophisticated electronic device was the Xerox machine, which occasionally worked. We had an FTS telephone line, a WATS line for communicating with other federal offices. Our draft opinions were handwritten, and re-written, and then expertly typed by Ms. Hopkins for issuance to the publishers of the official, and some lesser-official reporters. It took approximately six months for an opinion to reach print. In the interim, we would receive advance sheets, six-line summaries called "squibs," of opinions from other courts around the country. I often telephoned the law clerks from other districts to request copies of opinions whose summaries addressed issues of interest to us. As these opinions were received, we cited them in our opinions and in the Judge's rulings from the bench – a procedure highly unfair to counsel, who did not yet have access to the latest developments in the case law of the Code.

As I recall, there were six reporters including *Bankruptcy Court Decisions, West's Bankruptcy Reporter, Collier on Bankruptcy,* and *Commerce Clearing House*, all vying for top honors. To accommodate them, we built the Judge's law library in Chambers on the second floor. Early in my clerkship, and certainly before I had received an official Court identification card, I came to Chambers in a T-shirt and jeans to help rearrange desks, move books and make room for the ever-increasing flow of material and information. Unbeknownst to Ms. Hopkins or me, the desks were attached to a silent alarm, which we tripped when we moved the desks. This alerted the United States Marshall Service, from which two stout gentleman burst into Chambers with guns drawn, only to find me in less-than-formal attire. I froze, and anxiously awaited Judge Lebowitz to explain who I was and what I was doing there.

As a young law clerk, I was awed by the task at hand, humbled to be a part of it and imbued with the power and majesty of the Federal Bench. At lunchtime one afternoon, Judge Lebowitz asked me to get him a can of soda, but upon my return to Chambers I found that he had returned to the Bench. I reasoned that he wanted the soda now, that surely he did not intend for it to become warm, sitting on his desk during the long afternoon session of Court. So I brought the can of soda into the Courtroom. The Judge quite convincingly indicated that my decision was not the correct one, gesticulating fervently to return the drink to Chambers. Obeying Court directives was forever thereafter tinged with solemnity.

On October 17, 1979, just seventeen days after the effective date of the new Code, Macon Uplands Venture, a hotel in downtown Macon, Georgia, filed a Chapter 11 case in Baltimore, Maryland. In the meantime, pending in the U.S. District Court for the Middle District of Georgia was its appeal from the dismissal by the Georgia Bankruptcy Court of its Chapter XII Bankruptcy Act case.

In our Court's first published opinion, *In re Macon Uplands Venture*, 2 B.R. 421, (Bankr. D. Md 1979) on November 5, 1979, Judge Lebowitz held that the Chapter 11 filing was proper, declined to abstain from the exercise of jurisdiction and scheduled an evidentiary hearing on the issue of venue.

Fifteen days later, on November 20, 1979, the Honorable Wilbur D. Owens, Jr., Judge of the United States District Court for the Middle District of Georgia, issued his opinion in *In re Macon Uplands Venture*, 2 B.R. 429 (D. M.D. Ga. 1979) in which he enjoined the debtor from further prosecuting the case in Maryland and transferred it to Georgia to be consolidated with the appeal. Knowing full well that under the new Code, a Bankruptcy Court could not enjoin proceedings pending in another court, but that such an injunction was one of the powers vested in the U.S. District Court, Judge Lebowitz directed his law clerk to find authority that such a transfer was a "push," not a "pull," and in *In re Macon Uplands Venture*, 2 B.R. 435, 1 C.B.C.2d 257 (Bankr. D. Md 1979) on December 11, 1979, held that the U.S. District Court for the Middle District of Georgia could not direct the Maryland Bankruptcy Court to transfer its Chapter 11 case to Georgia.

When the opinion was issued, Judge Owens telephoned the Baltimore Chambers and politely suggested that we not issue another opinion and that I not take my vacation to Disney World, for his jurisdiction extended to the vault of the heavens over Georgia above which I would surely have to fly.

On January 22, 1980, in *In re Macon Uplands Venture*, 2 B.R. 44, 1 C.B.C.2d 385 (Bankr. D. Md 1979), following the evidentiary hearing, Judge Lebowitz concluded that the transfer of the Chapter 11 to the Bankruptcy Court for the Middle District of Georgia was appropriate. The Fifth Circuit Court of Appeals on August 13, 1980, in *In re Macon Uplands Venture*, 624 F.2d 26, 2 C.B.C.2d 753 (5th Cir. 1980), in which the debtor appealed from the Order of the District Court transferring the debtor's Chapter 11 Code case to the Georgia District Court, denied a stay pending appeal, and holding the transfer Order to be interlocutory and non-appealable pending a final judgment, failed to reach the question of whether the District Court could transfer to it the Code case. In *In re Macon Uplands Venture*, 7 B.R. 293, 4 C.B.C.2d 6 (D. M.D. Ga. 1980), Judge Owens on October 10, 1980, held that the debtor's Chapter 11 Code case was a nullity, and then affirmed the dismissal of the Chapter XII by the bankruptcy court, denied a stay pending appeal, and concluded that the Maryland Bankruptcy Court lacked jurisdiction over the new Chapter 11 case – an opinion in which there is little doubt that Judge Lebowitz did not concur.

I consider *In re Levy Ford*, 3 B.R. 559 (Bankr. D. Md 1980)(*en banc*) to be the farthest-reaching decision by Judge Lebowitz in which I participated. We joked in Chambers that we had Tower Ford, Apple Ford (two automobile dealerships) and Levy Ford, and although the debtor pronounced his name "lee - vi" (as in the type of blue jeans), we pronounced it "lev-ee," as in levy, sequestration and attachment since, after all, we were considering the effect of the Code and creditors' reach upon tenants by the entirety assets in Maryland. Of the four views (two Judges and two law clerks) expressed on the question of whether and to what extent the bankruptcy estate under the Code included an individual debtor's exemptible interest in entireties property, mine was the minority view that the interest was not exempt as to joint creditors who could, absent bankruptcy, reach both the debtor's interest and the property itself (and I was called upon to draft an opinion to the contrary), a position vindicated years later in *Sumy v. Schlossberg*, 777 F.2d 921 (4th Cir. 1987), which I remember discussing at some length with Judge Lebowitz after he had returned to private practice.

I recall with a smile the case of *In re Blue*, 4 B.R. 580 (Bankr. D. Md 1980) Judge Lebowitz' opinion that prohibited debtors from dismissing their cases filed under the Act with the intention of refiling under the Code in order to obtain the benefit of the more generous federal exemptions. I wrote the initial draft opinion commencing, "The best-laid schemes

"... for his jurisdiction extended to the vault of the heavens over Georgia above which I would surely have to fly."

Marc R. Kivitz

"Judge Lebowitz, with an eye toward developing law, had a strict and literal style of interpretation of the Code ..."

Marc R. Kivitz

o' mice an' men gang aft agley," together with a footnote to Robert Burns' *To a Mouse, On Turning Her Up In Her Nest With The Plough (1785),* and an earlier Japanese work from which it was taken. The citation, however *a propos*, never made it to the published opinion, Judge Lebowitz having scratched through it with his explanation to me that his next law clerk might not be so literary and he didn't want the style of his opinions to change so radically.

As you can tell from the *Blue* incident, Judge Lebowitz had a great sense of humor. A classic example of the banter in Chambers is the following: We had received some correspondence from Steven Fedder, an attorney representing an individual who had filed for bankruptcy, but apparently the communiqué contained some spelling and other typographical errors. Judge Lebowitz, the consummate grammarian, circled these mistakes with his crimson magic marker and returned it to Ms. Hopkins. A second message was subsequently received, but it, too, contained inaccuracies, albeit fewer in number, which the Judge, marker in hand, noted, and it quickly became known as the "better redder Fedder debtor letter."

Judge Lebowitz, with an eye toward developing law, had a strict and literal style of interpretation of the Code, a decisional method not without consequence, some intended and some not. Section 524(d) of the Code read, "The court shall hold a hearing." Part of the congestion on the calendar was occasioned by "flights" of discharge hearings conducted by the Court every hour throughout the day, sometimes several days per week and often hundreds of cases each day. Congress, in its infinite wisdom, had mandated that debtors appear before the Court for a discharge hearing, perhaps the one instance when they might actually see a Judge as part of the bankruptcy process. His Honor could not see his way clear to interpret that provision as it now reads as "the court *may* hold a hearing," 11 U.S.C. § 524(d)(2004). In retrospect, perhaps His Honor was right after all.

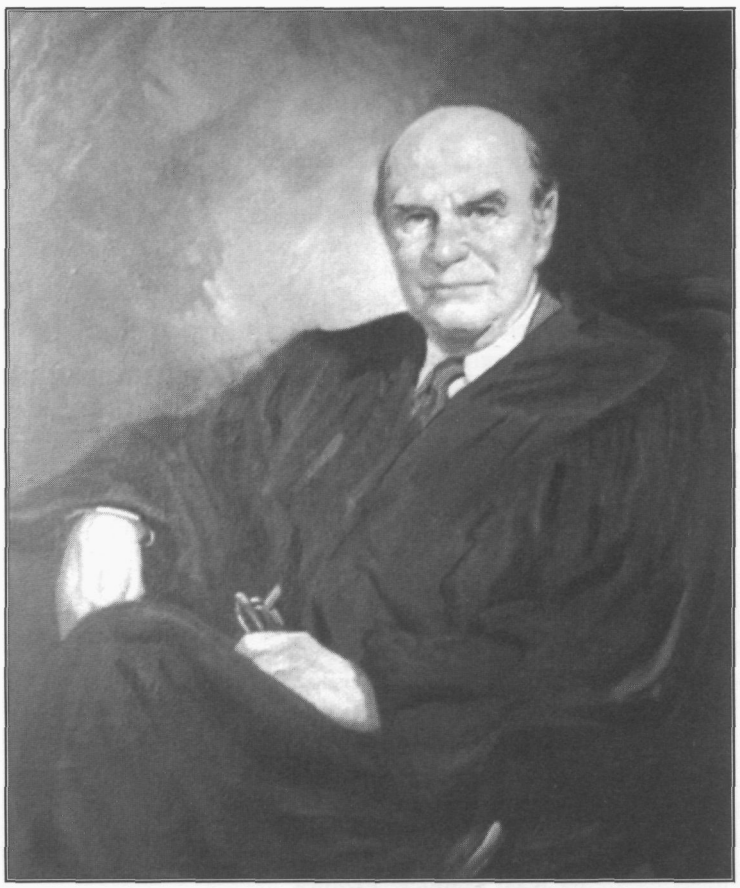
I so thoroughly enjoyed the academic atmosphere which Judge Lebowitz created and it was a pleasure to work with Marlene L. Brooks, David B. Shapiro, David E. Rice and Susan Van Lieshout, law clerk to Judge Goldburn, (now Judge Susan V. Kelley of the Wisconsin Bankruptcy Court), whose admission to the Bankruptcy Court I had the honor of moving. I will always be grateful to Judge Harvey M. Lebowitz for the opportunity he gave me and for the many blessings that have been bestowed upon my family and me as a result. I also thank Chief Judge James F. Schneider, whose sense of history and foresight have provided me this occasion to recall fondly the days of my youth.

Original Chapter 7 Panel Trustees for the District of Maryland *1979*

Marc H. Baer, Esquire
Robert Baker, Esquire
Frederick L. Bierer, Esquire
Wilbur W. Bolton, III, Esquire
Charles A. Castle, Esquire
Nelson C. Cohen, Esquire
Lawrence D. Coppel, Esquire
Allan J. Culver, Jr., Esquire
Kenneth F. Davies, Esquire
Gerald S. Danoff, Esquire
Mark S. Devan, Esquire
Morton A. Faller, Esquire
Nelson I. Fishman, Esquire
Samuel J. Friedman, Esquire
Brian A. Goldman, Esquire
Gary A. Goldstein, Esquire
Gary R. Greenblatt, Esquire
Howard M. Heneson, Esquire
Alexander Gordon, IV, Esquire
Robert D. Harwick, Esquire
Marc Robert Kivitz, Esquire
Richard M. Kremen, Esquire
Earl F. Leitess, Esquire
James L. Lekin, Esquire
George W. Liebmann, Esquire
Terry L. Musika, CPA
Melvin I. Paul, Esquire
Leslie J. Polt, Esquire
Michael G. Rinn, Esquire
Josef E. Rosenblatt, Esquire
Howard A. Rubenstein, Esquire
Michael J. Schwarz, Esquire
Roger Schlossberg, Esquire
Hyman P. Tatelbaum, Esquire
Louis J. Sagner, Esquire
Mitchell Stevan, Esquire
Neal Melnick, Esquire
David W. Tonnessen, Esquire
Richard L. Wasserman, Esquire
Lloyd O. Whitehead, Esquire

The Evolution of the Bankruptcy Court, 1970-1981

BY CHIEF U.S. DISTRICT JUDGE EDWARD S. NORTHROP
MARCH, 1981



Portrait of Chief U.S. District Judge Edward S. Northrop (1911-2003) by Larry Wheeler.

The Bankruptcy Court has undergone considerable change in the last decade. In 1970, the governing law was the Bankruptcy Act of 1898, as amended. The Act was broken down into chapters, the first seven of which dealt with straight bankruptcy and, the others, designated "chapter proceedings," dealt with extensions and arrangements between the debtor and his creditors and corporate reorganizations of various sorts.

Under the Act of 1898, original and exclusive jurisdiction of all bankruptcy matters was vested in the United States District Court, sitting as a court of bankruptcy. The jurisdiction of the District Court was exercised through a Bankruptcy Judge, formerly designed as a Referee, appointed by the District Court.

All bankruptcy cases were filed in the office of the Clerk of the United States District Court. Except for Chapter X reorganization cases, all bankruptcy cases were then referred by the Clerk of the District Court to the Bankruptcy Judge under Bankruptcy Rule 102. The District Judge would determine whether or not to refer a Chapter X case. Because the District Court was vested with the original and exclusive jurisdiction over bankruptcy cases, a District Judge could withdraw a case from the Bankruptcy Judge and act himself or assign it to another Bankruptcy Judge. The Bankruptcy Judge could also transfer the case back to a District Judge. Not only could the District Court act as the court of original jurisdiction under the Act of 1898, it also sat as an appellate court for all judgments rendered by the Bankruptcy Judge, whether final or interlocutory.

Under the 1898 Act, the Bankruptcy Judge (or the District Judge sitting as a court of bankruptcy) was directly involved in the administration of a bankruptcy estate, including the selection of trustees when required, the conduct of the meeting of creditors, and the review and approval of a multitude of actions proposed to be

taken by the trustee or the debtor-in-possession in connection with the administration of the estate or the operation of the debtor's business.

Because the courts of bankruptcy had only summary jurisdiction, plenary proceedings were required to be held in a state court or the United States District Court having appropriate jurisdiction, unless the parties consented to the proceeding being heard by the Bankruptcy Court.

In 1970 the Bankruptcy Court was located in Room 343 of the United States Post Office, Calvert and Fayette Streets, in Baltimore. It had a staff of two people and only 485 cases were filed that year. There was one full time Bankruptcy Judge in this District, Joseph O. Kaiser, who served from December 29, 1955, to May 31, 1979. On November 2, 1972, Glenn J. Goldburn was appointed as a part time Bankruptcy Judge and assigned to Hyattsville, Maryland. The Hyattsville Court had and continued to have jurisdiction of the five southern Maryland counties consisting of Montgomery, Prince George's, Charles, Calvert and St. Mary's. The Bankruptcy Court in Baltimore had and continued to have jurisdiction over the remainder of the state.

When Judge Kaiser retired in May, 1979, Harvey M. Lebowitz was appointed to fill the vacancy. At that time, under the aegis and with the assistance of the District Court, the Bankruptcy Court located in Baltimore was restructured and modernized within the context of the Act of 1898. As a result of the reorganization of the court and the adoption and enforcement of effective procedures and the cooperation of the bar, a large backlog of open cases was substantially reduced.

The Bankruptcy Reform Act of 1978, known as the Bankruptcy Code, became effective on October 1, 1979. Under the Code the jurisdiction of the Bankruptcy Court is greatly enlarged. One of the most important changes was the elimination of the distinction between summary and plenary proceedings.

The District Court no longer had original jurisdiction over bankruptcy cases. This jurisdiction is now vested in the Bankruptcy Court. Although 28 U.S.C. § 1471(a) confers original and exclusive jurisdiction of all cases under title 11 in the District Court and 28 U.S.C. § 1471(b) confers original and non-exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11 in the District Court, the Bankruptcy Court for the district in which the case is commenced is mandated, under 28 U.S.C. §1471(c) to exercise all of the jurisdiction conferred on the District Court. As a result, the District Court now sits as an appellate court only and not as a court of original jurisdiction on any case commenced subsequent to October 1, 1979.

The Bankruptcy Judge is no longer required and in many instances is prohibited from becoming involved in the administrative aspects of the estate. Like other federal judges, the primary responsibility of the Bankruptcy Judge is to decide disputes and controversies.

Both Judge Goldburn and Judge Lebowitz are full time Bankruptcy Judges. The Bankruptcy Court now has its own Clerk's Office staffed with Chief Clerk, Chief Deputy Clerk, Deputy Clerk in charge of the Hyattsville Office, and a staff of 20 personnel in both courts. All papers are now filed with the Clerk's Office of the Bankruptcy Court and not with the District Court. The Bankruptcy Judges are now authorized to have secretaries, law clerks and other court room personnel. As a result

"The Code reflects the drastic changes in the commercial marketplace which have occurred since the enactment of the original Act ..."

Chief Judge
Edward S. Northrop

of the enlarged jurisdiction of the Bankruptcy Court and having been relieved from purely administrative matters, the Bankruptcy Judge now hears a significantly larger number of controversies than he could previously hear.

"... now ranks in the upper one-third of all districts in the total number of filings and sixteenth in the number of Chapter 11 reorganization filings."

Chief Judge Edward S. Northrop

The Code reflects the drastic changes in the commercial marketplace which have occurred since the enactment of the original Act, especially in the field of credit, finance, securities, real estate, and the buying habits of the American public, and attempts to cope with the realities of today and the developments which have taken place over a period of time in the world of commerce and industry. The "fresh start" concept still prevails, but now provisions have been enacted in order to attempt to assure the fresh start philosophy. Toward that end, more liberal Federal exemptions are granted and leverage has been taken away from the creditors by requiring the court to approve reaffirmation agreements so that debtor may receive the maximum benefits from the Code. The old chapter proceedings have been streamlined and have been consolidated and reformed under the Code. The "wage earner" concept of old Chapter XIII has been broadened under new Chapter 13 to permit more individuals as well as small individually owned businesses to take advantage of its benefits.

The following table demonstrates the constant increase in the number of filings since 1970.

Year	Number of Filings
1970	485
1971	575
1972	596
1973	603
1974	659
1975	959
1976	1,530
1977	1,533
1978	1,794
1979	2,151
1980	4,798

It is apparent from the chart that there has been a dramatic increase in the number of filings for 1980, the first full year under the Code. It is difficult to assess the causes, but among the primary factors which might give rise to this significant increase, is the state of the economy, including inflation and the lay-offs and the high level of unemployment in industrialized areas, as well as the more liberal provisions of the Code and lawyer advertising.

As a result the work load of the Bankruptcy Court has drastically increased. The Bankruptcy Court for the District of Maryland now ranks in the upper one-third of all districts in the total number of filings and sixteenth in the number of Chapter 11 reorganization filings. This increase is expected to continue and even accelerate so long as the present economic conditions prevail and as the general public becomes, or, through advertising, is made aware, of the advantages afforded by filing in bankruptcy.

How We Founded the Bankruptcy Bar Association for the District of Maryland

BY LAWRENCE D. COPPEL

Prior to 1979, the Maryland bankruptcy bar was a small one. Historically, bankruptcy law was practiced by small boutique firms that also performed collection work. The rapid growth of the bankruptcy bar can be traced back to the mid-1970s when the state's larger law firms began to develop expertise in bankruptcy matters. At the same time, the number of business case filings increased and bankruptcy courts were issuing a greater number of decisions applying the former Bankruptcy Act of 1898 to a modern day business environment. Another significant development was the Supreme Court's adoption of the 1973 Bankruptcy Rules under which Bankruptcy Referees became Bankruptcy Judges and the filing of a bankruptcy case resulted in an automatic stay of all creditor actions.

The established bar associations were slow to recognize these developments. Back then, they did not consider bankruptcy as an area of substantive law that deserved the same prominence as other specialties. Bar committees that had been established for bankruptcy specialists were largely inactive.

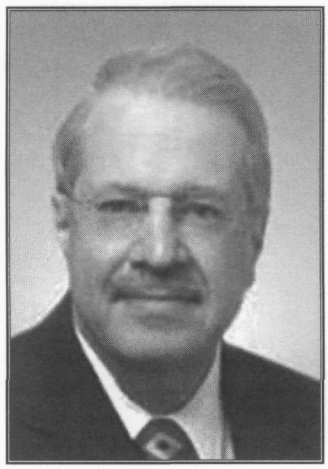
At about the time of the passage of the Bankruptcy Reform Act of 1978, I became aware that the commercial real estate attorneys in Baltimore City were having regular monthly meetings to discuss issues of mutual interest. I attended one of these and realized the benefits of forming an active group of lawyers who shared similar interests. With the advent of the Bankruptcy Code, the time was ripe to convene a group of bankruptcy lawyers to familiarize themselves with the new law.

In 1979, with the assistance of Nelson Fishman, I invited a group of Baltimore bankruptcy attorneys to meet over lunch at Gordon Feinblatt. Although the records of these early meetings no longer exist, I recall that the group was comprised of seven lawyers including Mr. Fishman and myself, Howard Rubenstein, Charles Tatelbaum, James Lekin, Richard Rosenstein and Michael Schwarz. The group called itself the "Baltimore Bankruptcy Bar Discussion Group," and met on a monthly basis to discuss topics of interest to bankruptcy practitioners. Not too long thereafter, we were joined by others, including today's judges, Duncan Keir and Steve Derby. Harvey Lebowitz also became an active member of our group after his appointment as Bankruptcy Judge in 1979. He continued his involvement after leaving the bench in January 1982 and became one of the Association's original directors and later its President.

In early 1982, a second *ad hoc* group of attorneys that practiced primarily in the Rockville division of the Bankruptcy Court was organized by Edward Dolan in order to meet with Judge Mannes for a discussion of bench-bar issues of mutual concern. Mr. Dolan later became the second President of the Association.

The Bankruptcy Court facilitated the organization of a state-wide bankruptcy bar through its appointment of committees whose members were practitioners from both divisions. Their interaction led to the decision to hold an annual dinner for bankruptcy attorneys and judges, the first of which was held at the Hilton Inn in Columbia on April 9, 1986.

By 1987, the Baltimore Bankruptcy Bar



Lawrence D. Coppel

"... its primary mission from the very beginning has been the education of its members and the improvement of the practice."

Lawrence D. Coppel

Discussion Group had grown to nearly 50 attorneys and the Rockville Bankruptcy Group had grown as well. It was at that time that the two groups decided to organize a bar association of Maryland bankruptcy attorneys.

Accordingly, The Bankruptcy Bar Association for the District of Maryland, Inc., was officially formed on March 2, 1988, when Articles of Incorporation were filed with the Maryland State Department of Assessments and Taxation. The first Board of Directors of the Association consisted of myself, Edward Dolan, Gail Green, Morton Faller, Michael Schwarz, Harvey Lebowitz, Richard Wasserman, Nelson Cohen and Thomas Lackey. The By-Laws established chapters in Baltimore and Rockville (now Greenbelt).

The BBA was established as a non-profit corporation for the purpose of advancing the interests of attorneys engaged in the practice of bankruptcy law. While the Association has provided an opportunity for its members to network, its primary mission from the very beginning has been the education of its members and the improvement of the practice. Beginning in 1988, annual continuing legal education programs planned by Ed Dolan and others were presented to the Association's membership. Before 1996, the CLE programs were held in Rockville at the Montgomery County Courthouse. Although held during the evening, these programs were well attended by attorneys from both chapters.

The BBA's first newsletter was published in October 1988. In a message from the President, I reported that the Association had 145 members with 74 in the Baltimore Chapter and 71 in the Rockville Chapter.

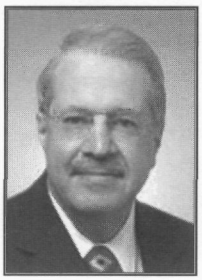
In 1996, the Board of Directors decided to expand the annual Spring dinner meeting into a two-day event over a spring weekend that would provide its members with CLE and an opportunity to network. On April 25-26, 1997, the First Annual BBA Spring Break Weekend was held at the Harbourtowne Golf Resort and Conference Center in St. Michaels, Maryland. Two years later, the location of the Weekend was moved to its current venue in Annapolis. The 2004 Spring Break Weekend was held on May 7-8, 2004, attended by over 150 persons, including bankruptcy judges from the District of Columbia, Northern Virginia and the four from Maryland, as well as attorneys, law clerks, spouses and friends.

The Association has come a long way since seven Baltimore attorneys met in 1979 over a brown bag lunch to discuss the practice. Today, the BBA has over 250 members practicing in all parts of the State. The Association is unique in that Maryland is one of the few jurisdictions whose bankruptcy attorneys have established an independent bar association. We are proud of our past accomplishments and look forward to an exciting and productive future.

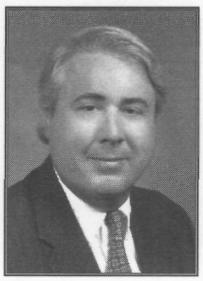
Presidents

of the Bankruptcy Bar Association for the District of Maryland

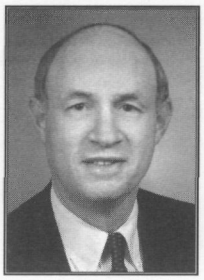
1987-2004



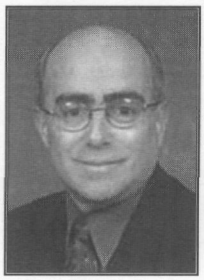
Lawrence D. Coppel
1987-1989



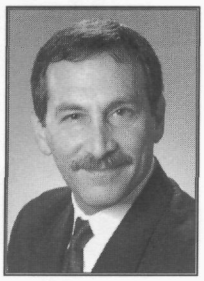
Edward C. Dolan
1989-1990



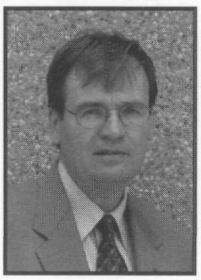
Richard L. Wasserman
1990-1991



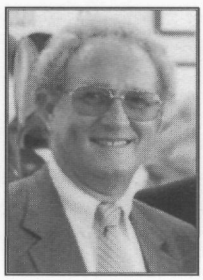
Morton A. Faller
1991-1992



Irving E. Walker
1992-1993



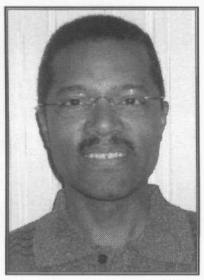
Philip J. McNutt
1993-1994



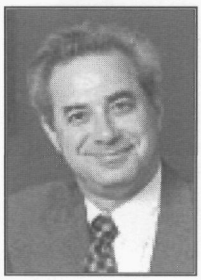
Harvey M. Lebowitz
1994-1995

Merrill Cohen
1995-1996

Deborah Hunt Devan
1996-1997

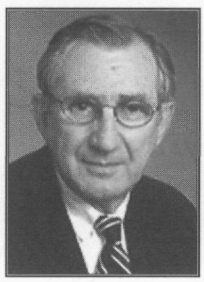


Gregory P. Johnson
1997-1998



Mark J. Friedman
1998-1999

James A. Vidmar, Jr.
1999-2000



Howard A. Rubenstein
2000-2001

John R. Garza
2001-2002

Nancy V. Alquist
2002-2003

Wendelin I. Lipp
2003-2004

Karen H. Moore
2004-2005

The First Maryland Bankruptcy Cases Filed Under the Bankruptcy Reform Act of 1978

October 1, 1979, was the effective date of the Bankruptcy Code and the birthday of the United States Bankruptcy Courts. Before that, bankruptcy cases were filed in the United States District Courts, and all bankruptcy pleadings bore the district court caption.

The very first Maryland bankruptcy case under the Code was the Chapter 11 case of Regal Construction Co., Inc., Case No. 79-1-1810, filed in the Hyattsville division, on Monday, October 1, 1979 at 8:30 a.m. Nelson Deckelbaum, Esquire, of the firm of Deckelbaum, Wolpert, Ogens & Caplan, 1140 Connecticut Avenue, Washington, D.C., was counsel for the debtor. The Bankruptcy Judge in Hyattsville was the Honorable Glenn J. Goldburn. The Bankruptcy Court was then located at 6525 Belcrest Road, Hyattsville, Maryland 20781. The Court moved to Rockville in August 1981. The filing fee of $200 for a Chapter 11 was certified by Luana M. Skibiel, the Hyattsville deputy in charge, as having been paid.

The first case filed in Baltimore under the Bankruptcy Code was the Chapter 13 case of Edward Scarborough, Case No. 79-2-1810-L, filed at 9:30 a.m. on October 1, 1979. The debtor's counsel was Michael J. Schwarz, Esquire, of the firm of Fleischmann, Needle, Ehudin & Schwarz, located at One Charles Center, Suite 705, Baltimore, Maryland 21201. Attached to the petition was a letter from Mr. Schwarz to Michael Kostishak, Clerk of the Court, dated Friday, September 28, 1979, indicating that the petition had been hand-delivered and requesting that it be docketed first thing Monday morning to prevent a pending foreclosure sale of the debtor's property. The Bankruptcy Judge in Baltimore was the Honorable Harvey M. Lebowitz. The Chapter 13 Trustee assigned to the case was John Robinson, whose office was then located at 6600 York Road, Baltimore, Maryland 21212. A hearing was held on May 30, 1980, at which time Judge Lebowitz granted confirmation to the debtor's "Second Modified Chapter 13 Plan." The file contains a letter to Judge Lebowitz dated January 7, 1981, from Robert L. Brownell, Esquire, of Wheeler and Korpeck, 930 Bonifant Street, Silver Spring, Maryland 20910, which stated the following:

> In the captioned Chapter 13 proceeding, we represented the Class Two Creditor, Thomas J. Knox. It is my understanding that the order confirming plan, dated June 4, 1980, was the first Chapter 13 plan approved in our District. It is with pleasure that I advise you that the debtor has fully complied with his obligation to the Class Two Creditor, as set forth in the plan and the order. In this case, the "system" worked.

The Bankruptcy Court was then located on the second floor of the Garmatz Courthouse at 101 West Lombard Street, Baltimore, Maryland 21201. The Court moved to the ninth floor in September 1983.

The case files were legal size, before 1982, when the Judicial Conference of the United States mandated that all Federal court pleadings be 8 ½ x 11 inches. The file covers were heavy brown cardboard, with case names handwritten by the clerks. Each pleading was docketed by hand, with handwritten notations as to docket number and date.

The first two digits of the file numbers assigned to the cases were based upon the year of filing (79); the next single digit indicated the venue of the case (1 for Hyattsville, 2 for Baltimore); and the last four digits indicated the sequential number of the case filed in that division. It was pure coincidence that both cases bore the same last four digits.

A Hall of Fame:

Great Maryland Bankruptcy Lawyers from the Past 50 Years

JEROME M. ASCH
(1923-1976)

SAMUEL J. FRIEDMAN
(1909-1999)

SYLVAN HAYES LAUCHHEIMER
(1870-1955)

HARVEY M. LEBOWITZ
(1929-1995)

J. MARTIN McDONOUGH
(1905-1983)

JOSEPH PICKUS
(1936-1981)

LOUIS J. SAGNER
(1900-1982)

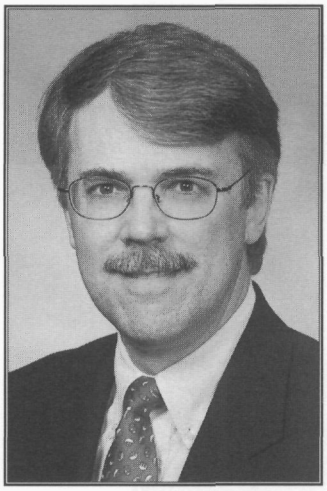
I. WILLIAM SCHIMMEL
(1896-2000)

MITCHELL STEVAN
(1921-1994)

HYMAN P. TATELBAUM
(1909-1998)

Chambers Days

BY DAVID E RICE



David E. Rice

Howard Rubenstein can do an uncontested Chapter 11 confirmation hearing in less than five minutes. I know that now because I have seen him do it more than once. His current record does not come readily to mind, but I am sure if asked Howard would tell you his best time (down to the second). Back in my law clerk days, however, I was still a skeptic about the feats of experienced professionals. My naiveté in such matters ultimately led me into the one moment Judge Lebowitz never let me forget.

Marc Kivitz, then the incumbent, greeted me when I reported for duty as the second of Judge Lebowitz's three law clerks in September of 1980. At that time, the entire Baltimore division of the Bankruptcy Court (courtroom, judge's chambers and clerk's office) was located on the east wing of the mezzanine level of the United States Courthouse. The chambers floor plan consisted of the Judge's large office and an even larger "library" separated by a reception area presided over by Judge Lebowitz's secretary, Naomi Hopkins. As the fates would have it, the law clerk's "office" was a desk in the library located side-by-side with the desk of the Courtroom Deputy, John Winkler.

By reason of the Court's recent decision in the *Levy Ford* case that made Gary Greenblatt famous or at least notorious among the bankruptcy bar,[1] Marc was at the time (as now) quite an enthusiast for the many arcane issues of the law of tenancy by the entireties property in Maryland. I carry with me to this day a shared fondness for *Phillips v. Krakower*, a Fourth Circuit decision that always intrigued Judge Lebowitz— but that is a subject for another day.[2] As the resident legal research maven, Marc was quite proud of the Court's budding "law library," which was housed on a few shelves behind the law clerk's desk. On my first day at work, the Court's West Bankruptcy Law Reporter collection consisted of a handful of paperback advance sheets and a single bound volume (it was 1 B.R.).

The early 1980s were the end of a different era in the practice of law. The fax machine and the now long-forgotten IBM "mag-card" typewriter were what passed for high technology. At the time, the creation of a document by "cut and paste" meant actual use of scissors, paste and a Xerox machine. Most lawyers then in practice in Baltimore at least claimed to remember the days when the courts were open for a half day on Saturdays and closed in August because of heat, humidity and lack of air conditioning.

Legendary figures were at large on the streets of downtown Baltimore. The Silverman brothers still practiced law out of the Bar Library. Melvin Perkins roamed the downtown sidewalks, a crutch under one arm, promoting his latest political candidacy and passing out cards that listed a telephone number for his campaign headquarters that rang in a public telephone booth on The Block. William Donald Schaefer was in his prime as Mayor of Baltimore. His unofficial goodwill ambassador, Mr. Diz, made the rounds distributing – whether you wanted them or not – promotional materials from the Mayor's office on upcoming events in the City.

One of the Mayor's initiatives in the late 1970s was to bring the movie industry into Baltimore. The first memorable blockbuster was "And Justice for All," which was released in 1979 and starred Al Pacino. The movie was shot on location in what is now known as the Clarence M. Mitchell Courthouse while I was a law student working as a part-time law clerk in law offices across the street in The Munsey Building. Unbeknownst to me at the time, one James F. Schneider had a front row seat for the production of the movie by reason of his work in the Courthouse as the General Equity Master. The Courthouse and in particular the Bar Library, where I had access coveted by non-working students, featured prominently in the movie and gave magnificent performances.

When Judge Schneider moved into chambers in February of 1982 after Judge Lebowitz returned to private practice, he brought with him a publicity still of Jack Warden in a memorable scene from that

movie. In the photograph, Warden (as an exasperated Judge Francis Rayford) stands behind the bench in his robe and holds aloft a pistol that he is about to discharge into the ceiling in a desperate effort to restore order in his courtroom. That photograph is framed and still hangs in Judge Schneider's chambers.

During my tenure in the United States Courthouse, newspaper reporters were permitted to use several very small offices located on the mezzanine level of the courthouse. Those offices happened to be located immediately outside the private entrance to the Bankruptcy Judge's chambers. As a result, I was often flagged down by reporters seeking insight into the seemingly cryptic goings on in the Bankruptcy Court. In time, these conversations expanded into off-the-record background lessons on the basics of the civil and criminal procedures of the District Court.

One of my regular customers was Allegra Bennett, who was then a young reporter covering the courthouse for the Baltimore *Sun*. Allegra eventually moved on to local television, where she became known as "The Renovating Woman," based upon a regular news segment that ran under that name. In recent years, she even published several books on home repair, at least one of which gets a four-star rating from several amazon.com readers.[3]

Judge Lebowitz, an ex-reporter himself, tolerated my discussions with Allegra and other reporters so long as they remained off the record. It was strict policy laid down from the beginning, however, that he would handle himself any calls coming into chambers from reporters. Judge Lebowitz always explained that his prior professional experience made him best able to deal with the wily ways of a reporter on the trail of a story. Based upon his sometimes forceful judicial and private practice demeanor, some might leap to the conclusion that this "press policy" was just more evidence indicative of a dominating everyday personality.

In truth, Judge Lebowitz was someone who was extremely loyal to and caring about his family, his chambers staff and the courthouse personnel. He had a wonderful sense of humor and enjoyed a good joke – especially one at his expense. Judge Lebowitz was notorious for agonizing over the written work product that came out of chambers. It was not unusual for a document to go through many drafts that saw commas variously inserted, deleted and then reinserted again at the same point. This was a trait he apparently brought over with him from his private practice days at the law firm of Gorden, Feinblatt, Rothman, Hoffberger and Hollander, where Naomi Hopkins had been his secretary as well. As an expression of her frustration and long suffering, Naomi typed out a page of commas, cut them into small individual squares, and kept them in a dish on her desk in chambers along with a bottle of white-out so that the Judge could add or delete a comma anytime he wanted without need for her to retype a document. Judge Lebowitz often pointed out that dish to visitors and told them the story of its origins.

"... Judge Lebowitz was someone who was extremely loyal to and caring about his family, his chambers staff and the courthouse personnel."

David E. Rice

The third law clerk who worked for Judge Lebowitz was Marleen Brooks. Sometime after I took up my duties Judge Lebowitz convinced the Administrative Office of the United States Courts that the workload burdening the Court warranted an additional law clerk as a short-term emergency measure. As a result Marleen was hired on for a six-month term, which was later extended for several more months. Eventually her emergency tour of duty could not be extended further, and Marleen announced that she had accepted a job in Hagerstown (where she still works as in-house counsel with Allegheny Power). John Winkler and I immediately dubbed her "Sacajawea," after the Native American maiden who guided Lewis and Clark on their explorations of the West.

When Judge Lebowitz retired from the bench and went back into private practice in February of 1982, Marc, Sacajawea and I hit upon an idea for what we thought would be a humorous and unusual gift for him. Harborplace was the new big thing in Baltimore at the time, and featured a photography studio like the ones in Ocean City and other beach resorts where customers could have what looked to be an old-fashioned photograph made complete with period garb. We picked an Old West theme, and gave Judge Lebowitz a picture of the three of us in the fashion of that time which features Marc as a gunslinger with a pistol on his hip and

bandoliers of bullets crossed over his chest. My copy of the photograph is a cherished possession. I believe Judge Lebowitz's copy may still be lurking around Judge Schneider's chambers.

One fateful day after Sacajawea had departed for points in Western Maryland, I was at work at my desk in the library on the draft of an order or opinion for Judge Lebowitz. John Winkler sat at his nearby desk tending his docket book. John came to work for Judge Lebowitz from the Circuit Court (then the Supreme Bench of Baltimore City), and maintained the court's docket manually in an 8½-by-17 daily calendar book.

"... tell him to give it his "best effort," a signal that miraculously would produce the choicest and earliest spot John had been reserving on the calendar ..."

David E. Rice

In the presence of attorneys, many will recall that Judge Lebowitz and John played out an elaborate ritual when the time came to schedule a hearing. The Judge relied upon John to protect and maintain an orderly docket. Whenever attorneys asked for a hearing, the Judge would turn to John and ask him when a hearing could be set. John would study his book and after some deliberation respond with a date well in the future. If the distant date did not suit counsel, the Judge would entertain their plea for an earlier date, which if successful resulted in his request that John see if he could "do better." That signal would, after appropriate page turning and further study of his docket book, prompt John to produce a date closer to the present. The "better" date would sometimes prove too distant for what counsel saw as the needs of their case, in which event the Judge heard appeals for an even earlier date. On those occasions when the appeal was granted, Judge Lebowitz would turn to John and tell him to give it his "best effort," a signal that miraculously would produce the choicest and earliest spot John had been reserving on the calendar for just such a hearing.

In any event, John and I were jolted from our tasks on the day in question when the door to Naomi's reception area opened and in walked Earl Leitess followed by Howard Rubenstein. As we learned in short order, Earl and Howard were fresh from a meeting in chambers with Judge Lebowitz at which they had announced that long-standing differences between the secured creditor (represented by Earl) and the debtor (represented by Howard) had been resolved at last and that confirmation of the debtor's plan of reorganization was thus not just at hand, but a mere formality and foregone conclusion.

Earl and Howard posted themselves in front of John's desk. Sensing where events might be headed, I kept my nose down in the work on my desk and an ear on the adjacent discussion.

According to the first-hand account provided by Earl and Howard, Judge Lebowitz had instructed them to see John about getting a hearing on confirmation of the debtor's plan set in on the docket as soon as possible. John studied his book and produced a date well in the future when an hour was available for the hearing. That date was evidently less than satisfactory for the schedule the former combatants had in mind. Since Howard represented the debtor, Earl let him take the laboring oar on the immediate oral motion for an expedited hearing.

Howard was in peak oratorical form. He presented John with a description of the recent hostilities between the parties, the arduous and many hours of settlement negotiations, the audience with and recent directions from Judge Lebowitz, and the pain of the many general unsecured creditors whose distribution might be delayed (or even lost) if the debtor's plan could not be confirmed at the earliest possible moment. John was not moved.

Undeterred, Howard resorted to his trump card. Summoning all his humility, Howard allowed as how the hearing would not take anything like the hour John contemplated because an uncontested confirmation hearing could be presented in five minutes, if not less. Thus, in Howard's view the hearing could be wedged in between almost any two hearings on a date immediately following expiration of the notice period. From his position slightly off stage, Earl personally endorsed Howard's status as a member in good standing of the five-minute uncontested hearing club. John remained unmoved.

At this point things began to get interesting. Howard, with support from Earl, went over all the previous ground. Prior arguments were restated, this time with the accompaniment of various gesticulations and occasional heightened tones of voice that underscored particular points sought to be emphasized for John's (and perhaps my) benefit. John was reminded that Judge Lebowitz had said

that the hearing was to be set in as soon as possible, which to Howard surely meant a five-minute hearing at the earliest possible moment after the notice period expired. I kept my head down in my work. John stood his ground. The hearing would be scheduled for an hour on the date initially indicated.

Rather than bringing matters to rest, denial of Howard's motion for an expedited hearing merely set off a renewal of that motion. All the fine points of the various arguments were elaborated upon again at length. In this round of argument, Earl assumed the first chair position with support to good effect from time to time from Howard. John took it all in, held his ground and then hesitated. That John had a moment of hesitation at this point in the proceedings is not surprising. By my recollection the discussion had been in full swing for at least 15 minutes. John turned toward my desk, and with the look of a man in search of a lifeline said, "Perhaps we should ask David what he thinks."

The situation presented called for an instant decision, either I had to find a way to help John gracefully back away from his distant one-hour hearing date, or I had to back him up without hesitation. While I awaited the arrival of the reinvigorated advocates in front of my desk, I chose the latter course. As if I had not heard the prior 15 minutes of proceedings taking place just across the room, Howard treated me to a polite rehearsal of all the grounds for an expedited hearing. I held firm. The hearing should be scheduled as John had originally indicated.

My endorsement of John's position prompted Howard into a lengthy discourse on his many years of practice and his mastery of the techniques of the uncontested hearing, which he assured me meant he could complete the needed hearing in a mere five minutes. I expressed the view that no lawyer that I had seen could get anything said or done in court in five minutes even if it was an uncontested matter. Sensing that his other arguments were not getting the desired results, Howard then chose to throw in for good measure the observation that after all "the Judge said the hearing should be set in as soon as possible."

At this crucial moment, I was standing behind my desk. Howard and Earl were facing me with their backs to the door leading to Naomi's reception area. I must have concluded that the time had come to bring to a close the discussion over the date selected by John. As the door opened slowly and before I could stop myself, I said to Howard something to the effect of, "I don't care what the Judge says, we are not going to set the hearing in for five minutes." As I completed this pronouncement, I saw that the Judge himself was standing in the doorway.

Judge Lebowitz backed away and quietly closed the door. As I recall, my brash pronouncement had the effect of bringing the debate to a close in fairly short order. The hearing was held on the date John had originally designated, the plan was confirmed and as far as I know the creditors got their distributions and were happy to get them whenever they arrived. Howard and Earl never knew that the Judge had been in the room.

Afterward, Judge Lebowitz never commented on the incident one way or the other, but he delighted in reminding me about it in a kindhearted way. When he could not get me to adopt his point of view, either in chambers or later in private practice, Judge Lebowitz would frequently say in passing that he was not surprised because I was "the one who doesn't care what the Judge says."

"I don't care what the Judge says, we are not going to set the hearing in for five minutes."

David E. Rice

[1] See *In re Levy Ford*, 3 B.R. 559 (Bankr. D. Md. 1980), *aff'd sub nom. Greenblatt v. Ford*, 638 F.2d 14 (4th Cir. 1981). Gary recounts his exploits in that case elsewhere in these pages.

[2] *Phillips v. Krakower*, 46 F.2d 764 (4th Cir. 1931), is still good law. You can look it up at *Chippenham Hospital v. Bondurant*, 716 F.2d 1057 (4th Cir. 1983).

[3] A. Bennett, *Renovating Woman: A Guide to Home Repair, Maintenance and Real Men* (Pocket Books 1997). When Allegra found a theme, she stuck with it. Her other works include: A. Bennett, *When A Woman Takes An Ax To A Wall; where is she really trying to go?* (LPC Group 2002), and A. Bennett, *How To Hire A Contractor: A Homeowners Guide To Dynamic Contractor Relationships* (Renovating Woman 2000). Like any Twenty-First Century author, Allegra has an Internet website, which can be found at www.renovatingwoman.com.

Law Clerks

To the United States Bankruptcy Court for the District of Maryland

Honorable Harvey M. Lebowitz

Name	Dates of Service
Marc Robert Kivitz, Esquire	1979-80
David E. Rice, Esquire	1980-82

Honorable Glenn J. Goldburn

Name	Dates of Service
Honorable Susan V. Kelley	1979-80
Daniel Carrigan, Esquire	1980-81

Honorable Paul Mannes

Name	Dates of Service
Janet M. Nesse, Esquire	1981-82
Gary A. Rosen, Esquire	1982-83
Victoria J. Krisch, Esquire	1983-84
John F. Davis, Esquire	1984-86
Linda Hitt Thatcher, Esquire	1986-88
Timothy P. Branigan, Esquire	1988-90
Paul-Michael Sweeney, Esquire	1990-91
Lisa D. Ettlinger, Esquire	1991-92
Reed P. Sexter, Esquire	1992-94
Caroline E. Hall, Esquire	1994-95
Jonathan Gold, Esquire	1994-95
Steven J. Schwartz, Esquire	1996-98
Jennifer A.L. Kelleher, Esquire	1997-98
Scott A. Shail, Esquire	1999-2000
Tammi Hellwig, Esquire	2000-01
Kimberly A. LaMaina, Esquire	2001-02
Katherine C. Parker, Esquire	2002-03
Laura M. McGeoch, Esquire	2002-present
Tammie Geier, Esquire	2003-present

Honorable James F. Schneider

Name	Dates of Service
David E. Rice, Esquire	1982
James H. Wannamaker, III, Esquire	1982-1984
Brent A. Friedman, Esquire	1984-1986
Cheryl D. Snyder Taragin, Esquire	1986-1988
Ellen Berkow Feldman, Esquire	1988-1989
Devethia Nichols-Thompson, Esquire	1989-1991
Kathleen Dunavin Schmitt, Esquire	1991-1993
Lisa Bittle Tancredi, Esquire	1993-1995
Maria Chavez-Ruark, Esquire	1995-1997
Carrie Beth Weinfeld, Esquire	1997-1999
Regan Kreitzer LaTesta, Esquire	1999-2001
Susan Jaffe Roberts, Esquire	2001-2003
Laura A. Skowronski, Esquire	2003-

Honorable E. Stephen Derby

Name	Dates of Service
James D. Kepley, Jr., Esquire	1988-89
Karin A. Garvin, Esquire	1989-90
Mary Frances Ebersole, Esquire	1990-91
John Douglas Burns, Esquire	1991-92
Thomas B. Guild, Esquire	1992
Kim Y. Johnson, Esquire	1992-93
J. David Gallagher, Esquire	1993-94
Stacey Hurwitz Heller, Esquire	1994-95
Jan I. Berlage, Esquire	1995-96
Peter S. Burke, Esquire	1996-97
Adam Hiller, Esquire	1997-98
Curtis J. Weidler, Esquire	1998-99
Vivieon E. Kelley, Esquire	1999-2000
David Levine, Esquire	2000-01
Joshua Taylor, Esquire	2001-02
Julie B. Christopher, Esquire	2002-03
John R. Solter, Esquire	2003-04
Katherine E. Steinberg Thomas	2004-05

Honorable Duncan W. Keir

Name	Dates of Service
Heather A. Klink, Esquire	1993-95
Jeffrey Rhodes, Esquire	1995-97
Catherine McCallie Stavlas, Esquire	1997-99; 2001-present (Elbow Law Clerk)
Bridget M. Healy, Esquire	2003-present (Elbow Law Clerk)
Stephen Scott Myers, Esquire	1999-2001

Temporary Emergency Law Clerks

Name	Dates of Service
Marleen L. Brooks, Esquire	1979
David B. Shapiro, Esquire	1980
David Schiller, Esquire	1992
Betsy Gravel, Esquire	1992
Yolanda D. Tanner, Esquire	1992
Kimberly Lensing, Esquire	1993-94
Jonathan L. Gold, Esquire	1994-95
David B. Rosen, Esquire	1995-96
Jennifer A. L. Kelleher, Esquire	1997-98
Deborah Eckert Krassy, Esquire	1996-97
Matthew W. Cheney, Esquire	1997-98
Jerrold N. Poslusny, Jr. , Esquire	1998-99
Rhonda S. Combs, Esquire	1999-2000
Kathryn Hanna, Esquire	1999-2000
Sonja F. Combs, Esquire	2000
Tammy A. Geier, Esquire	2000-01
Stephen A. Metz, Esquire	2000-01
Katharine E. Wiltuck, Esquire	2000-01
Kathryn E. Matousek, Esquire	2001-02
Mary Adrian Van Sickel, Esquire	2001-02
Colleen J. Hampton, Esquire	2001-02
Mary Adrian Van Sickel, Esquire	2001-02
Jeffrey N. Rothleder, Esquire	2002-03
Matthew C. Brown, Esquire	2002-03
Kimberly E. Neureiter, Esquire	2002-03
Joan S. Epstein, Esquire	2002-04
Kerry Hopkins, Esquire	2003-04
Jason W. Hardman, Esquire	2003-04

Remarks of the Honorable Harvey M. Lebowitz

At the Dedication of Courtroom 9-C, Garmatz Federal Building and U.S. Courthouse Wednesday, September 14, 1983

Harvey M. Lebowitz

. . . Now, if it please the Court, I must begin with an admission. When I left the Bench I took with me a souvenir. Regularly, like clock work, once a year about this time when I was on the Bench I would get laryngitis. Reputedly it was for hollering at the attorneys. But that's not true. I think it was because of the HVAC system in this building. That is heating, air conditioning and whatever, which I think they have mixed up. It was cold when it should be warm, warm when it should be cold.

When I left the Bench, I thought this problem would disappear. It has not.

Well, they say once you're on the Bench it gets into your blood. That's true, because it's there, and I can't get rid of it. I blame it on this building. I hope that this courtroom and the facilities up here are a lot better than they were on the second floor.

If you will pardon my laryngitis, I'll proceed. If there is something you don't hear, it is probably not worth hearing anyway.

I'm grateful to Judge Schneider for asking me to say a few words at this singular event. He emphasized, however, the word few, and suggested that if I went beyond five minutes he would either hold that I have violated the stay of Section 362, or he would enjoin me from further utterance under Section 105. And he has his watch out. Therefore, I will keep my remarks to a minimum, Judge.

It is not every day that one has the privilege of attending a dedication of a spanking new courtroom, much less participating in its dedication. In this particular case, I have more than just passing interest in this courtroom and the adjacent support facilities. I hope you won't think me immodest when I say that I feel somewhat paternal with regard to these facilities.

I began to perform my official duties as Bankruptcy Judge for this district on June 1, 1979, under the Act. The operative date of the Code, October 1, 1979, was only about four months away. We were all looking ahead to that advent, and the physical plant and the facilities that would be required to carry out and ensure that the Bankruptcy Court would properly function under the new Code and under the added responsibilities imposed by the new Code.

As early as September, 1979, we began on the long road which culminated in this magnificent courtroom, the judges' chambers, the clerk's office, and all the other amenities necessary to a fully-coordinated and unified Bankruptcy Court system.

None of this would have been possible without the complete dedication and cooperation of the District Court. Senior, then Chief Judge Northrop, was absolutely tireless in his efforts to expedite the construction of the new Bankruptcy Court. He helped coordinate the construction activities on all three floors of the courthouse on which construction was to be done. That's the third, the ninth and the second. It was through his efforts and his wealth of practical experience in dealing with government agencies that we were able to include the Bankruptcy Court as an amendment to the contract for the construction of the courtrooms on the third floor and thereby avoid the necessity of going through a separate, what is called a prospectus procedure, which would have been very time consuming and costly. In the end, we saved the taxpayers substantial dollars.

I remember our initial efforts in attempting to obtain additional space in the second floor office area where the Civil Service Commission has its office. We made them an offer. They respectfully rejected our invitation to move.

At that point it appeared that the

Bankruptcy Court would have to find a home in some other building outside this courthouse. But either fortuitously, or through the powers of friendly persuasion, the National Labor Relations Board decided it would vacate its office area on the ninth floor, and this would be destined to become the new home of the Bankruptcy Court.

Before this could be, however, there was still one more small item that had to be considered. That was whether the Fourth Circuit Court of Appeals would have any objection to the Bankruptcy Court as its next door neighbor.

Judges Winter and Murnaghan could not have been more accommodating and cooperative. They gave their endorsement. We had finally found a home for the Court, and for this, the Fourth Circuit has our deep appreciation.

Then the planning began. It was an educational and an interesting experience, but also a very time-consuming experience. I had no idea of the work and all of the hard, determined effort that went into the planning of a court facility, especially the courtroom proper. Acoustics were critical. The courtroom had to be virtually soundproof. Voices were not allowed to leak in or out of the jury room. Bench conferences were not to be overheard by the jury. Yet the acoustics had to permit the attorneys, the judges and the witnesses to be heard throughout the courtroom. That is no easy feat to balance all those problems. Literally hours were spent on the planning, the construction and the acoustics of the courtroom. Even the light switches had to be properly placed.

None of this could have been accomplished without the help and advice of Paul Schlitz, the Clerk of the District Court, who has had many years of experience in helping to build the courtrooms. I don't know how many he's built. They are untold numbers.

Thanks must also be given to all those who worked with me for many hours in planning and drafting all of the plans and correcting the problems that had to be accounted for in the court facility. I cannot remember them all, but special thanks should be given to Bob Baldesari of the Administrative Office, Louis Komondy, Chief of the Space and Facilities Branch of the administrative office, Terry Imamura of the architectural staff of the administrative office, Jerry Vally of the GSA, our landlord, Mark Beck and Associates, the architectural firm that designed the ninth floor renovations.

When I left the Bench, this court facility was still on paper and only a dream. I had some doubts as to whether in the light of the *Marathon* case these facilities would ever be completed. It is quite a moving experience for me to look around here and see what the completed job actually looks like. It is absolutely astounding and inspiring.

In addition to what you see here, there is a large unfinished area designated as "Phase Two," which is presently being reserved for courtroom space and the required amenities, should this district be allocated an additional Bankruptcy Judge at some future time. And I might say the statistics certainly demonstrate the fact that this district does need at least one additional Bankruptcy Judge.

I must make one further comment. For years I have looked over two eagles, the two you see here. I see them here today, looking much better and healthier than when they stood in hearing room 2B.

Seeing them today and remembering what they looked like before, I now know what "illegal" means.

I wasn't sure whether to put that in or not. I did. My secretary said take it out. She was right again.

All right, this is really the most fitting place that I know of to do justice and equity. There is no doubt in my mind that the Bankruptcy Court and its dedicated Judges will continue to fulfill their duties and obligations to the public in such a manner as to bring credit, respect and honor to themselves, and to the judiciary of the United States which they serve.

"When I left the Bench, this court facility was still on paper and only a dream.

... this is really the most fitting place that I know of to do justice and equity."

Harvey M. Lebowitz

(l-r) Former U.S. Bankruptcy Judge Harvey M. Lebowitz and Judge James F. Schneider, September 1983.

Memorial Tribute to the Honorable Harvey M. Lebowitz

Presented at the 66th Annual Fourth Circuit Judicial Conference
The Greenbrier, White Sulphur Springs, West Virginia
June 27, 1996

BY JAMES F. SCHNEIDER

No one can adequately sum up the life of another, and this is especially true in the case of the man in whose memory I speak today.

The Honorable Harvey M. Lebowitz, a leading member of the Maryland bar and a distinguished former United States Bankruptcy Judge for the District of Maryland was a complex man, a man of many parts. As a lawyer, he could take delight in disputing a fine point of law. Indeed, I believe that he could do equal justice to both sides of any legal argument. He could fill a courtroom with his presence. As a judge, he rendered numerous decisions under the Bankruptcy Code that interpreted the provisions of the new law for a generation of practitioners. He was a cultured gentleman who enjoyed the theater and good music, especially opera. He was a mentor to untold numbers of young lawyers who, following his example and his teachings rose to the top of their profession. He was a revered practitioner whose colleagues recognized his talents and ability by electing him President of the Bankruptcy Bar Association of Maryland. He was a humanitarian who loved people and always tried to lend a helping hand to those less fortunate. He was a devoted husband, father and grandfather, whose family was as dear to him as life itself.

Harvey Melvin Lebowitz was born in Baltimore on December 13, 1929, the son of Samuel Lebowitz and Lillian Caplan Lebowitz. He was educated in the Baltimore public schools and graduated from the University of Maryland at College Park in 1951 and from the University of Maryland School of Law in 1954. From 1955-57 he served in the counterintelligence division of the U.S. Army in Germany. On August 4, 1955, he married Eunice Levin. They had three children: Harrison, Bonnie and Fran. He began his legal career at the firm of Hoffberger and Hollander, from his admission to the bar until 1961 when the firm merged with another to become Gordon, Feinblatt, Rothman, Hoffberger and Hollander. There he became a partner specializing in real estate, business law, debtor-creditor law and bankruptcy. On June 1, 1979, he left Gordon, Feinblatt to accept appointment as United States Bankruptcy Judge for the District of Maryland at Baltimore.

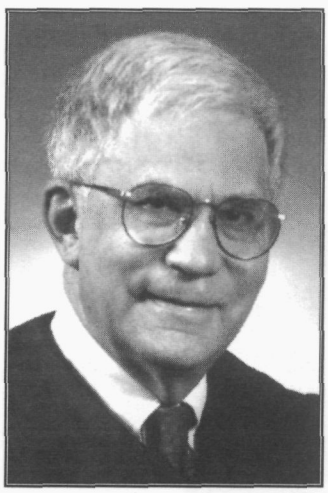
His service as judge was brief but significant. He was responsible for organizing the clerk's office and for modernizing the operations of the court. He worked tirelessly at night and on weekends to deal with the avalanche of cases filed under the new Bankruptcy Code that went into effect on October 1, 1979, and to close the many old cases filed under the Bankruptcy Act. Judge Lebowitz graced the bench with dignity and honor. Because of the importance which he placed upon his work, others by example gave extra effort to theirs. He raised the prestige of the bench and the standards of the bar and, in so doing; he enhanced the public's respect for our system of justice. Among his most noteworthy opinions was *In re Levy Ford*, dealing with the effect of bankruptcy upon property held as tenants by the entireties that was affirmed by the Fourth Circuit, but there were many, many other equally brilliant ones too numerous to catalog here. In 1982, he relinquished his judgeship to return to private practice as head of the bankruptcy department with the firm of Frank, Bernstein, Conaway and Goldman. As a practicing attorney, he won renown in 1986 for his authorship of *The Bankruptcy Deskbook*, a one-volume legal treatise written in plain English to dispel some of the mystery from our field of jurisprudence. In 1991, he joined the firm of Whiteford, Taylor and Preston, where he continued his practice. Last autumn when he retired, he looked forward to many golden years surrounded by friends and family. Alas, it was not to be. On November 4, 1995, not yet 66 years old, he died of heart failure while playing tennis.

How to sum up such a life? The essential elements of Harvey Lebowitz were a love of the law, a deep commitment to hard work, a passion for competition in life's arena, whether in court or on the playing field, an understanding of human nature and, above all, his love of friends and family. He lived intensely and died doing something he loved.

Some will remember Harvey M. Lebowitz as a great advocate; others will recall a devoted family man, a humanitarian, a generous friend. But to the judges and lawyers of Maryland and of the Fourth Circuit, he will always be *Judge Lebowitz.*

My First Twenty-Three Years on the Bankruptcy Bench

BY PAUL MANNES



Paul Mannes

Following the resignation of my predecessor, Glenn J. Goldburn, Chief Judge Edward Northrop of the United States District Court, then responsible for appointments of Bankruptcy Judges, decided that the successor for the position that was being moved from Hyattsville to Rockville should be someone from the suburban Washington area. Bankruptcy experience, while useful was not to be a prerequisite.

I was a trial lawyer in Montgomery County and had just finished my term as President of the Montgomery County Bar. Although I was never inside a Bankruptcy Court in my legal career, I felt I had a chance, because I met one of the qualifications as I practiced in Rockville, the new location of the Bankruptcy Court. I gathered some recommendations and made my application. Lo and behold, I was selected for the position.

It now became incumbent upon me to learn Bankruptcy Law. I ordered some tapes of lectures by George Treister from the Practicing Law Institute about the Bankruptcy Reform Act of 1978. But the bulk of my bankruptcy education came from an eight-hour road show put on by Professor David Epstein. At the end of those eight hours, and after review of his written material and the tapes of his lectures, I felt as though I had a tiny handle on my job. In retrospect, I realize that I was very fortunate to become a Bankruptcy Judge so soon after the enactment of the Bankruptcy Reform of 1978, when the new Bankruptcy Code was new to everyone. With David Epstein's help, I probably knew as much about bankruptcy as 50% of the lawyers appearing before me. As a trial lawyer, I knew how to keep my ears open and listen to the other 50%.

Anyway, I had the help of my soon-to-be colleague Judge Harvey Lebowitz. I called on Judge Lebowitz and introduced myself as his new colleague and detailed my ignorance of Bankruptcy Law. I asked him how to prepare for my new position. He gave me a short list of sections of the Bankruptcy Code to become familiar with, promised his unending cooperation, and I departed assured by the knowledge that whatever fix I found myself in, I could turn to him for help. You can imagine my surprise a few weeks later when I received a telephone call about an article in the *Baltimore Sun*. It seems that Judge Lebowitz decided he could not fulfill his familial obligations on the then salary of Bankruptcy Judges of $54,000, and he was going to resign and take a far better paying position with the law firm of Frank, Bernstein, Conaway and Goldman.

In a flash, this novitiate was about to become the senior Bankruptcy Judge in the District of Maryland. Terror struck me, and I wondered how I was ever going to make it. But as luck would have it, I was soon joined by Judge James F. Schneider, who was equally inexperienced in the field of bankruptcy, and the two of us took advantage of all of the on-the-job training offered by the Federal Judicial Center and other CLE opportunities offered by New York University, the Southeastern Bankruptcy Law Institute, the Commercial Law League, and others.

After taking the oath of office on December 30, 1981, I took up shop in Rockville on the 5th floor of a private office building located at 451 Hungerford Drive. I inherited Judge Goldburn's staff, Mary Lee Zimmerman, his Judicial Assistant, and Janet M. Nesse, his Law Clerk. As one can tell from this booklet, Mrs. Zimmerman has continued to put up with me these many years, and I am particularly grateful to this day that she turned down at least one attorney who said that I

might fire her and bring my own secretary with me. The court has been well served by her judgment, industry and patience with me.

Janet Nesse was an enthusiastic Law Clerk who likewise had no bankruptcy experience. Imagine our surprise when going through some old case files we discovered that contrary to what we were doing in combining our Opinions and Orders, Judge Goldburn had issued separate Orders whenever he had written an Opinion. At this point, we discovered Bankruptcy Rule 921 and figured that I probably had not entered a final order in 60 days in those cases where I had a written opinion. The court survived.

Judge Goldburn resigned before he could hold court in the facility in Rockville that he designed. In the six months between his resignation and my appointment, the work in the Division was done by visiting Judges. Judge Henry Evans, a retired Bankruptcy Judge of the Eastern District of Virginia, and Judge Roger Whelan of the United States Bankruptcy Court for the District of Columbia. In periodic visits to the Court, these two Judges handled the emergency matters that came up and kept the Rockville Bankruptcy Ship afloat. As to Judge Whelan, there is one aside that I will not forget. He and I went to the Southeastern Bankruptcy Law Institute in Atlanta for a session and, for economy's sake, shared a room. Little did I know that Judge Whelan had won several Olympic gold medals in snoring.

As a result of not having a resident judge, numerous matters were continued without having any return date. Therefore, someone had to go through all the cases and decide what was hot and what was not. It occurred to me that the easiest way to handle this was to publish notices asking the litigants to notify us of pending matters that they wished to have heard. I created the name of an individual to whom parties were to mail requests for hearings by using the pseudonym of a United States District Court Judge who was noted for moving as slow in the handling of a trial as one possibly could without falling asleep. This device flushed out the cases that required action, and the only person who saw through my ruse was my former law partner, Judge Stanley Klavan.

That was a kinder and gentler period because there were far fewer cases filed in Maryland. The number of cases filed for the statistical years ending June 30, 1981, 1982, and 1983 were 5,349, 3,961 and 4,556 respectively. The swell for the year 1981 can be explained by the fact that the Maryland Legislature saw fit, effective July 1, 1981, to opt out of the more generous scheme of exemptions allowed under federal law and, as it was permitted to do pursuant to §502(b) of the Bankruptcy Code, established the minimal amounts of exemptions allowed a debtor existing almost to this day. So many cases were filed in advance of the legislative mandate and the witching hour of midnight June 30, 1981, including the afternoon that the office building in which the court was located was emptied by a bomb scare that the clerks continued to take new case filings in the parking lot. The long line of filers continued after the all clear and the reopening of clerk's office.

What the Rockville facility lacked in amenities was made up by its favorable location. The Court was very close to the Circuit Court for Montgomery County and all of the pleasures and conveniences of Rockville. But, security was non-existent. All someone had to do after hours was to carry a ladder in the office building and climb over the partition wall into the Court. As to the Judges, after a bitter hearing where we might have found an ex-wife's payments not to be discharged or the court had entered an Order allowing for foreclosure, we used the same elevator as the perceived victim of the Judge's rulings. If anyone was really angry, that person could wait by the Judge's parking space adjacent to the back door. The parking lot was supposedly constructed according to Montgomery County standards with a minimum of runoff and a maximum of absorption. It did not work during heavy rainstorms, and this resulted in massive ankle-deep puddles in the lot.

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Unamed Plaintiff's Lawyer

In discussing security, or the near lack of it, I should point out that then, as now, we had duress alarm buttons located at various points throughout the Court. Under the system provided by the GSA, when a button was depressed, that would contact some bureaucrat located in downtown Washington who, if he was not then on break, was supposed to dial the Rockville Police Department to send one of its vehicles over to investigate what had happened at the Bankruptcy Court. This seemed problematic, so I arranged with friends in the Montgomery County Police Department, the central communications center of which was just down the road, to have the duress alarm go directly into its switchboard. This solution did not meet the approval of the bureaucrat, who would not hear of it. So I wrote a letter "for the record" to all and sundry that if there were an emergency at the Bankruptcy Court that could have been but was not met by a prompt response, at least the record would show who was responsible for this dereliction. The bureaucrat was unmoved by the letter.

As the volume and complexity of bankruptcy cases increased exponentially, the Court spread out over the 5th floor, eventually taking over the entire floor, except for one office that was occupied by the "Bankruptcy Boys Club," consisting of Richard Gins, Brian Seeber, Roger Schlossberg, and several others who paid for the privilege of having a 10 x 14 ft. space to put up their various legal shingles, put down their coats, and meet clients. This office was adjacent to the smaller courtroom created after the appointment of Judge Derby and across the hall from the main courtroom. The partitions in the building were very thin. From time to time, the Courtroom Deputies in the smaller courtroom, Susan Kirkland and Gail Larrick, would have to go next door to tell the Boys to calm down because we could not hear the witnesses.

Since we were in a private office building, we were able to hold court far into the evening and over weekends, something that we cannot do in Greenbelt. Such sessions were made necessary by the ever increasing caseload. Bankruptcy cases often require immediate attention, so matters cannot be set at our leisure. One such weekend hearing is described below.

Prior to my appointment, both Chapter 7 debtors and their lawyers were expected to attend a hearing at which time the debtors were told that they were to receive a discharge under Chapter 7 and the effect of it. In short order, I excused attorneys from having to appear, but it was a serious matter for debtors to appear. I can recall one case where I did something that I now regret; I denied a debtor's discharge for failing to appear. In an effort to liven the hearing, I would tell stories – one such about Harry Truman, who insisted on repaying all of the debt from his failed clothing business. I warned debtors who were being discharged that if they intended to run for President that was a good thing to do. Another story that would often be told, until my Courtroom Deputy threatened to poison me if I told it again, concerned the famous Bankruptcy Bumblebee. This creature was one I had often heard described to a jury in speeches after an expert witness for the defendant would tell the jury that it was impossible for an event to happen or have the effect as the plaintiff stated. Whereupon, the plaintiff's lawyer would talk about the bumblebee. "You know, the bumblebee, that little thing with itty bitty wings and a big fat body, now these professors with all these degrees will tell you that that bumblebee can't fly, it's aerodynamically impossible for it to do so. But that dumb little bumblebee never went to Harvard and it can't read the expert reports. It just beats its wings and it flies." And that is what we would tell Chapter 13 debtors when some creditor would say that it was impossible for them to make the payments under their plan.

Chief Judge Northrup was succeeded by Judge Frank Kaufman as Chief Judge shortly before my appointment. There are two memories of Judge Kaufman that I treasure. The first involved his call upon Judge Schneider and myself to write legislative history for the benefit of Senator Mathias with respect to cer-

tain proposed amendments to the Bankruptcy Code regarding financial arrangements. This involved an area of law that neither one of us had ever trod through, but somehow we put together some language that met the Senator's approval. The other touching moment came following the decision of the Supreme Court in the case of *Northern Pipeline Construction Company vs. Marathon Pipeline Company*, 458 U.S. 50 (1982); the case where the Supreme Court found the jurisdictional grant of the Bankruptcy Court not reaching constitutionally acceptable lines. The plurality decision of the Court resulted in a holding that all of Title II, the amendments to Title 28 contained in the 1978 Bankruptcy Reform Act, were unconstitutional. Aware of the momentous impact of its decision upon the bankruptcy system, the Supreme Court gave Congress two opportunities to amend the jurisdictional scheme by postponing enforcement of its decision. For various reasons, Congress did not act, and the positions of Bankruptcy Judges were thereupon vaporized, there being no statutory authorization for them. Something had to be done with the Bankruptcy Judges. We were therefore to be made into Bankruptcy Magistrate-Advisors to the District Court pending Congressional action. In a touching ceremony next to the registration desk of the Greenbrier Hotel where the Fourth Circuit Judicial Conference was taking place, and attired in semi-athletic clothes, Judge Schneider and I were sworn in as Bankruptcy Whatevers. One of our colleagues within the Circuit realized that inasmuch as he was over 55 years and was being involuntarily retired from his position as a Bankruptcy Judge he was therefore entitled to receive his pension forthwith. He declined the invitation and off he went.

Former Judge Lebowitz had Judge Kaufman's ear. It was Judge Lebowitz's opinion that contrary to what the Judges felt, the caseload in Baltimore was heavier than it was in Rockville at that time. As a result, I often spent Fridays in Baltimore where the docket might consist of 12 cases under Chapter 13 and a few motions for relief from stay. The experience was redeemed by the Courtroom Deputy assigned to me, the late Margaret Snapp. Her good humor and the opportunity to have lunch with my colleague made these visits a day to look forward to.

The Bankruptcy Court had little input as to the move to the facility in Greenbelt, although a number of last minute corrections were made through the intervention of Judge Keir who, unlike some personnel working on the job for GSA, understood the plans and understood the deficiencies in the project. Greenbelt presented a monumental facility that looked like a courthouse and arrangements for security of the staff and the judges that were non-existent in Rockville. It offered courtrooms for both Bankruptcy Judges that functioned as courtrooms.

In trying to recall the notable cases and opinions, I have to confess to a poor memory. Unlike cases that I argued in the Court of Appeals 30 years ago where I can remember the arguments as if they occurred today, the thousands of bankruptcy cases that I have handled seemed to have blended into obscurity. There are some exceptions.

The case of *National Energy & Gas Transmission, Inc.*, and its associates, is the only truly massive case that I handled, concluding a couple of sales of assets that each approached $2 billion. Some measure of the complexity of the case may be gleaned from the fact that at the time of writing this I had approved well over $40 million in fees, a sum, as I said in court, in excess of all fees that I had allowed up to the time of handling this case. The case involves issues that I had never encountered in either my judicial career or practice. It seems as if every major law firm has been involved in this case at one time or another, although the local bar has had an active role in various aspects of it.

The case of *Dominic Antonelli* was another memorable case. His assets exceeded $200 million. Because of some improvident loan guarantees, the claims against him were far in excess of that. The case involved one of the

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weekend hearings described above and involved estimating the claim of the Federal Deposit Insurance Corporation against Mr. Antonelli, Director of the failed Madison Bank, an entity that if left alone, probably would have come through the real estate downturn with flying colors. My task that was handled in a weekend hearing involved going through hundreds of confidential loan files and fixing a sum for estimation to enable the FDIC to vote on acceptance of the plan, one that was ultimately confirmed. The *Antonelli* case, as with the cases of *Jerry Wolman*, prove that, despite incurring enormous debt, individuals could come through bankruptcy with more than the clothes on their back, even though their debts far exceeded their assets. The reason for this was that in both cases the individuals were regarded as honest and fair individuals who did not cheat their creditors and associates. When they made money, the people with whom they dealt made money. Conversely, when they lost money, those creditors took their losses without a spirit of vindictiveness.

In re Atlantic Manufacturing Corp. was a Chapter XI that I inherited that was finally closed with the assistance of Judge Keir as Successor Trustee. The much promised assets of the estate in Saudi Arabia were never able to be retrieved. One could not fault the Trustee for not wanting to go to Saudi Arabia and submit himself to the jurisdiction of that country.

There was also the *Cooper* case that I heard within six weeks after starting that involved the meanest woman I ever encountered. She boarded horses, some of which belonged to some young children. Following a dispute with their parents, she got even by selling the horses for dog food.

I have written a number of opinions involving the intersection of Bankruptcy Law and Family Law, starting with *Coffman*, involving the question as to whether a marital award in Maryland was excepted from discharge under § 523(a)(5) of the Bankruptcy Code. This was followed by *Stone*, involving an agreement, *Hesson* and *Dexter*, in which I tried to lay out the jurisprudence of § 523(a)(15), and finally, *Blaemire*, where I found that an attorney appointed to represent minor children was owed a debt in the nature of child support

Then there was the case of *Yimam*, where two debtors, husband and wife, had massaged the bankruptcy system in such a way by filing seven bankruptcy cases in an effort to forestall foreclosure. I decided that enough was enough and that I had to fashion something under the Bankruptcy Law to prohibit an infinite number of these tag-team bankruptcy filings. For example, I reasoned in the opinion that if Snow White filed bankruptcy, she could be followed by Doc, Dopey, Sneezy, Grumpy, Happy, Bashful and Sleepy and thus keep a creditor at bay in perpetuity. Likewise, debtors could transfer a 1% interest in property to a third party for no consideration to enable that cohort to file a case and avoid foreclosure. To thwart this abuse of the bankruptcy process, I fashioned relief in the form of an equitable servitude that would provide for *in rem* relief from the stay for a reasonable length of time in order to put an end to these hi-jinks.

All in all, I see that they have me down for 166 published opinions, more than half being written in the first five years that I was a Judge. In the past five years, I see that I have published some 16 opinions. This phenomenon can be explained both in the pride of a new judge in publishing opinions and the fact that with the maturing of the Bankruptcy Reform Act of 1978 and its revisions, the Circuit Courts and the Supreme Court have clarified what seemed murky issues in the days following its enactment. The Bankruptcy Reform Act of 1978, now 25 years old, is a mature statute. While it can use some fine tuning, as outlined by Bankruptcy Judges Small and Wedoff, it does not require the massive renovation called for by some. The care that went into its drafting as depicted in the legislative history appearing in *Collier's* may never be lavished upon another bankruptcy statute. It is a national treasure. I have been proud to have been able to administer it to the best of my ability.

My Ten Most Important Decisions

BY JUDGES DERBY, KEIR AND SCHNEIDER

JUDGE DERBY'S TEN IMPORTANT DECISIONS

Chief Judge Schneider has requested each of Maryland's bankruptcy judges to provide a list of the judge's ten most important opinions. In attempting to respond, I have found it difficult to articulate an appropriate selection standard.

Important to whom? Important to the parties before me? All matters I assume are important at the time to the parties involved, which is why they have presented the matter to the court for decision. I hope I never appear to treat a matter for decision with less than the full seriousness and sincerity expected by the parties for them to accept the decision as thoughtfully and impartially made, with regard for their concerns.

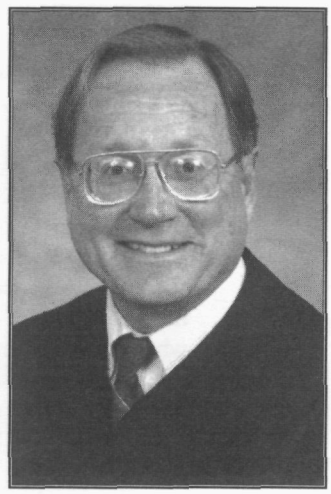
Important to jurisprudence? I could not presume such importance; that is for others. I am but one bankruptcy judge among many talented judges deciding matters every day that affect the lives of others. Important to me because I found the legal issue intellectually stimulating and was satisfied that I had articulated a sound answer, Had I resolved a dispute wisely, or done good for someone? Such a standard would stress self-importance too much. Important to the bar because an opinion was published and had value as precedent? Each opinion is but one cog in an ever changing landscape.

After reflection, I have concluded to list ten of my decisions, including both published and unpublished, with a word about the significance of each to me, and I leave to the reader the determination of what is important.

The consolidated cases of *Merry-Go-Round Enterprises,* the most complex bankruptcy case over which I have had the opportunity to preside, provided many important moments.

1. My decision to convert the *Merry-Go-Round Enterprises* Chapter 11 reorganization case to a Chapter 7 liquidation case after two years of disappointing operations with inadequate prospects for a successful reorganization. There was no written opinion. As I remember, my decision was rendered orally to a courtroom full of attorneys in the early evening at the conclusion of a multi-hour hearing on March 1, 1996. On the facts and the law, I had confidence in my decision, but I felt disappointment and a tremendous weight of uncertainty over what would be the consequences for general creditors, landlords, employees and the new Chapter 7 Trustee.

2. A non-decision in the Merry-Go-Round case. Shortly after the *Merry-Go-Round* case had been converted, I was advised in Chambers that more than one hundred Merry-Go-Round employees had appeared for a hearing, although we had none scheduled. Rather than allowing them to leave confused, with no explanation, I convened court for a non-hearing before a packed courtroom. I spent the next 20 minutes explaining what was going on in the case, what had and would happen, what they might expect, what they should not expect, and what would be my role in reviewing matters that might affect them. I think my remarks were appreciated, although the circumstances were not.



E. Stephen Derby

3. *In re Merry-Go-Round Enterprises, Inc.*, 244 B.R. 327 (Bankr. D. Md. 2000). This opinion is noteworthy because of the sheer size of the $71.2 million contingent fee I allowed counsel for a settlement before trial. I had to be convinced that there was no violation of either statute or the Rules of Professional Conduct in honoring the Trustee's pre-petition fee agreement with counsel who had done a superb job.

4. *In re Merry-Go-Round Enterprises, Inc.*, 208 B.R. 637 (Bankr. D. Md. 1997), *aff'd*, 180 F.3d 149 (4th Cir. 1999) ("Cutler Ridge") and *In re Merry-Go-Round Enterprises, Inc.*, 241 B.R. 124 (Bankr. D. Md. 1999). The significance of these opinions was to settle legal rules for the treatment of lease claims arising from post-petition and assumed leases.

5. My decision to remand for trial the Chapter 7 Trustee's complaint against Merry-Go-Round's financial advisor, Ernst & Young, to the Circuit Court for Baltimore City. The published opinion in this case was by Chief Judge Motz of the District Court. *In re Merry-Go-Round Enterprises, Inc., et al., Ernst & Young, LLP, et al. v. Deborah Hunt Devan, Trustee,* 222 B.R. 254 (D. Md. 1998). Among the factors I cited favoring remand were respect for the Trustee's choice of forum and her right to a jury trial in State court at a time when her right to a jury trial in federal court was uncertain. The Trustee's recovery by settlement of this litigation eliminated the possibility of an administrative insolvency and assured a meaningful distribution to prepetition creditors.

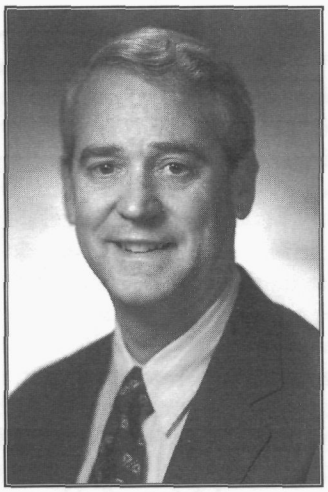
6. *In re Printing Dimensions, Inc.*, 153 B.R. 715 (Bankr. D. Md. 1993). By this opinion I attempted to remind and clarify for bankruptcy attorneys whose fees must be approved by the court, that the Maryland Rules of Professional Conduct apply to them and require, for the protection of their clients, that fee retainers be placed in an escrow account and may not be spent by an attorney until earned and approved by the court.

7. *In re Woodscape Limited Partnership*, 134 B.R.

165 (Bankr. D. Md. 1991). By using a then fresh analysis of case law under the Bankruptcy Act, this opinion kept open the door for motivated ownership interests in a debtor to buy back its equity interests with reasonably equivalent new value contributed to a debtor's reorganization as an independent doctrine, and not as an exception to the absolute priority rule.

8. *In re Naron & Wagner, Chartered*, 88 B.R. 85 (Bankr. D.Md. 1988). This opinion recognized that creditors require some enhanced disclosure protections from insider dealings when a *de facto* liquidation of substantially all of a debtor's assets is proposed in a Chapter 11 case before approval of a liquidating plan.

9. *Carter v. Predeoux*, Case No. 03-5-2761 (Bankr. D.Md., Nov. 18, 2003). The significance of this case is not the substance of the judicial action, *i.e.* the court accepted the withdrawal of a motion; rather, the significance was where the court was sitting. This was the first matter heard by the U.S. Bankruptcy Court for the District of Maryland in the new courtroom in Salisbury, Maryland, where the court now sits on the third Tuesday of each month. Use of this courtroom facility by the bankruptcy court and by the Chapter 7 and Chapter 13 Trustees represents an effort to make the court more accessible to debtors, creditors and attorneys on Maryland's Eastern Shore.



Duncan W. Keir

10. *In re Sherwood Square Associates*, 87 B.R. 388 (Bankr. D.Md. 1988) and 107 B.R. 872 (Bankr. D.Md. 1989). The significance of these two opinions is that they illustrated my position early in my judicial career on several legal issues commonly arising in Chapter 11 reorganization cases. They have been cited to me many times over the years.

In addition, I have compiled the following list of ten of the more important bankruptcy cases over which I have presided (n terms of size and complexity of issues presented to the Court):

1. *In re Merry-Go-Round Enterprises, Inc.*
2. *In re G. Ware Travelstead*
3. *In re Pocket Communications, Inc.*
4. *In re Baltimore Emergency Services, Inc.*
5. *In re Railworks Corporation*
6. *In re USINTERNETWORKING, Inc.*
7. *In re Sunny's Great Outdoors, Inc.*
8. *In re Historic Inns of Annapolis*
9. *In re John J. Neubauer, Jr.*
10. *In re Anton Motors, Inc.*

JUDGE KEIR'S TEN IMPORTANT OPINIONS

1. *Startec Global Communications Corp. v. Videsh Sanchar Nigam Ltd. (In re Startec Global Communications Corp.)*, 292 B.R. 246 (Bankr. D.Md. 2003), *aff'd*, 300 B.R. 244 (D. Md. 2003).
2. *In re Criimi Mae, Inc.*, 251 B.R. 796 (Bankr. D. Md. 2000).
3. *Cunningham v. Homecomings Financial Network (In re Cunningham)*, 246 B.R. 241 (Bankr. D. Md. 2000), *aff'd sub. nom. Ryan v. Homecomings Financial Network*, 253 F.3d 778 (4th Cir. 2001).
4. *Homeside Lending v. Denny (In re Denny)*, 242 B.R. 593 (Bankr. D. Md. 1999).
5. *GAF Linden Employees Federal Credit Union v. Robertson (In re Robertson)*, 232 B.R. 846 (Bankr. D. Md. 1999).
6. *In re Shady Grove Tech Center Associates Ltd. P'ship*, 216 B.R. 386 (Bankr. D. Md. 1998).
7. *In re Delray Assoc. Ltd. P'ship*, 212 B.R. 511 (Bankr. D. Md. 1997).
8. *In re Fairview-Takoma Ltd. P'ship*, 206 B.R. 792 (Bankr. D. Md. 1997).
9. *In re Reese*, 194 B.R. 782 (Bankr. D. Md. 1996).
10. *Wolff v. FWB Bank (In re Richman)*, 181 B.R. 260 (Bankr. D. Md. 1995).

James F. Schneider

JUDGE SCHNEIDER'S TEN IMPORTANT OPINIONS

1. *National City Bank of Minneapolis v. Lapides (In re Transcolor Corp.)*, 296 B.R. 343 (Bankr. D. Md. 2003).
2. *Transcolor Corp. v. Cerberus Partners, L.P. (In re Transcolor Corp.)*, 258 B.R. 149 (Bankr. D. Md. 2001).
3. *In re Coastal Carriers Corp.*, 128 B.R. 400 (Bankr. D. Md. 1991).
4. *Spinoso v. Heilman (In re Heilman)*, 241 B.R. 137 (Bankr. D. Md. 1999).
5. *Allnutt v. Associates Leasing, Inc. (In re Allnutt)*, 220 B.R. 871 (Bankr. D. Md. 1998).
6. *In re Symington*, 209 B.R. 678 (Bankr. D. Md. 1997).
7. *In re Butcher*, 189 B.R. 357 (Bankr. D. Md. 1995), *aff'd*, 125 F.3d 238 (4th Cir. 1997).
8. *Hallock v. Key Federal Savings Bank (In re Silver Oak Homes, Ltd.)*, 167 B.R. 389 (Bankr. D. Md. 1994), *app. dism.*, 169 B.R. 349 (D. Md. 1994).
9. *Hemelt v. Pontier (In re Pontier)*, 165 B.R. 797 (Bankr. D. Md. 1994).
10. *In re Ridgely Communications, Inc.*, 139 B.R. 374 (Bankr. D. Md. 1992).

The Day I Filed 14 Chapter 7s in a Parking Lot

BY WENDELIN I. LIPP

One of the changes engendered by the enactment of the Bankruptcy Code allowed States to "opt-out" of the Federal exemption scheme. On May 19, 1981, the Maryland General Assembly chose to opt-out by enacting Acts 1981, ch. 765, which reenacted, with amendments, Section 11-504 of the Courts and Judicial Proceedings Article of the Maryland Code, effective July 1, 1981, "altering exemptions from execution on a judgment and in bankruptcy and prohibiting a debtor from electing the federal bankruptcy exemptions."

Wendelin I. Lipp

The Maryland exemptions were skimpy compared to the Federal exemptions and created a flurry of activity to file cases before the change in exemptions was to become effective. I called every client I had seen who indicated a need to file chapter 7 and advised them of the law change. I prepared 14 cases for filing on June 30, 1981, the day before the right to claim Federal exemptions would be lost to Maryland residents.

I loaded two shopping bags, consisting of 14 original petitions with three copies of each for filing and one copy of each filing to return with a date stamp to prove the case had been timely filed. I arrived at the Bankruptcy Court (then located in Hyattsville), only to find all of the clerks standing outside in the parking lot and the doors blocked from entry because of a bomb scare.

I panicked. The cases had to be filed that day. Before calling my malpractice carrier, I grabbed a few of the clerks who were standing outside with me and we discussed what would happen if the clerk's office was shut down for the day. They assured me that they would accept my cases in the parking lot if necessary. Fortunately, after a while, a false alarm was declared and we were admitted into the building.

All 14 cases were set for meetings of creditors on the same day and at the same time. My clients comprised the entire docket as each of my cases was called one after the other. The trustee used good judgment and did not object to the exemptions, but he did verify that the cases were timely filed.

How I Became a Bankruptcy Judge

BY JAMES F. SCHNEIDER

In 1981, I was in my fourth year as General Equity Master to the Supreme Bench of Baltimore City (now "the Circuit Court for Baltimore City"), had been a city prosecutor for five years and became inspired to seek a State court judgeship. In addition to the cases I handled, I became well known to the Bench and Bar through my writing of history, including my work on the centennial celebration of the Bar Association of Baltimore City in May 1980. Fifteen hundred attorneys and judges attended the program, the first ever held at the new Baltimore Convention Center, including Justice Thurgood Marshall, whose statue at the Federal courthouse was dedicated that day. Each of them received a copy of the commemorative book I had written for the occasion.

PHOTO BY GUILL PHOTO

Justice Thurgood Marshall speaking on May 16, 1980 at the Baltimore Convention Center at the 100th anniversary of the Bar Association of Baltimore City. Front row (l to r): Chief Judge Robert Sweeney, Chief U.S. District Judge Edward S. Northrop, Theodore S. Miller, Herbert Belgrad, Joseph K. Pokempner and James F. Schneider.

Accordingly, in the spring of 1981, I applied for one of three vacancies on the State District Court for Baltimore City, "made the list," was interviewed by Governor Harry Hughes, but failed to be appointed. Undaunted, I next applied for a judgeship on the Supreme Bench, the vacancy created by the impending mandatory retirement of Judge Albert L. Sklar that December at the age of 70. I had clerked for Judge Sklar nine years before and my respect and admiration for him as a Judge and a human being knew no bounds. It would have been a great honor, indeed, to have followed my mentor into judicial office. Instead, Fate intervened.

In the summer, a number of my friends who practiced both in bankruptcy and equity told me about a vacancy that had occurred on the U.S. Bankruptcy Court in Hyattsville. I had always dreamed of becoming a State Circuit Judge, but now this new prospect began to intrigue me. As Equity Master, I handled mortgage foreclosures, actions to quiet title, receiverships, bulk sales, assignments for the benefit of creditors, and countless other types of equity proceedings – in other words, commercial matters that included the State side of insolvency. I was not phased by the heavy volume of cases, enjoyed solving problems and interacting with attorneys.

I held two hearings every day five days a week that required written opinions and reviewed hundreds of orders every week before they were sent to the Equity Judge for signature. I tried to emulate Judges Joseph Kaplan and Robert Karwacki in the efficient manner in which they decided complex issues and their kindness and consideration to the lawyers and litigants who appeared before them. So I threw my hat in the ring.

In those days, Bankruptcy Judges were appointed by the U.S. District Courts. On Thursday, September 17, 1981, I was interviewed over a brown bag lunch by Chief District Judge Frank Kaufman and future Chief District Judge Alexander Harvey II, in Judge Kaufman's conference room. (Judges Kaufman and Harvey had been appointed on the same day in 1966 and had agreed that when their turn came to be Chief Judge, Judge Kaufman would take the position first, being the elder of the two. But they also agreed that they would share the power to make appointments.)

They couldn't have been kinder to me. This was no stress interview. We talked about the job but also about the Sugarman sculpture in front of the Courthouse. I told them the story I had just read in an old *American Heritage* magazine, about Diego Rivera, the Mexican artist commissioned to paint a mural in the lobby of Rockefeller Center in 1930. Nobody bothered to check into his political leanings, but they became all too apparent as the mural progressed. A figure who looked remarkably like Lenin appeared in one part of the painting surrounded by cheering members of the proletariat, while a number of industrialists and capitalists, including Mr. Rockefeller himself, were portrayed as oppressors, with menacing expressions and odd-looking microbes that were supposed to represent syphilis germs. As a result, Rivera was discharged and the mural was painted over. The Judges seemed to relish the thought of destroying offensive art and laughed heartily at the tale.

I was remarkably relaxed and the interview went well, but at the end, the Judges said that even though they thought I was a promising candidate, the appointment should probably go to someone from what we now know as the Southern Division. Accordingly, it was announced in October that Paul Mannes, Esquire, of Rockville, had

been the successful candidate.

So I continued my quest for a State Court judgeship while going about my duties as Master. I was home on vacation on my 34th birthday, November 18, 1981, when I got an excited call from Ted Miller, my friend and former President of the Bar Association of Baltimore City, who informed me that Judge Harvey Lebowitz had announced his intention to resign. I immediately filed my second application.

Meanwhile, my application for appointment to the Supreme Bench was still pending. I was interviewed by the Judicial Nominating Commission on Judge Sklar's 70th birthday, Friday, December 18, 1981. The next morning, I was aroused from sleep by his telephone call informing me that I had made the list for his vacancy, which was published in the Saturday Morning *Baltimore Sun*. The article was entitled, "John Carroll Byrnes Nominated for Judgeship, with Three Others." The handwriting was on the wall.

On December 23, 1981, without a second interview, Chief Judge Kaufman called me on the telephone at my office in Court House East and asked if I would like to be the next Bankruptcy Judge for the District of Maryland. My answer was a resounding "Yes!" (I recall that my good friend, Paul Carlin, then City Bar Executive Director, now Executive Director of the Maryland State Bar Association, happened to be visiting me when the call came.)

On Friday, December 30, 1981, I met Paul and Karen Mannes for the first time in Chief Judge Kaufman's chambers, just before Paul's investiture in the Ceremonial Courtroom in the Garmatz Courthouse. There was a tremendous turnout, and I remember that busloads of Paul's friends and admirers had come from Montgomery County and points west to be present. That was also the day I met Naomi Hopkins, who for the next 12 years would be my valued Judicial Assistant and devoted advisor, and also David Rice, whom I was most fortunate to have stay on as law clerk.

On January 13, 1982, I was interviewed at the Federal Courthouse by a Merit Selection Panel composed of Herb Belgrad, President of the Bar Association of Baltimore City, J. Michael McWilliams, President of the Maryland State Bar Association and Michael J. Kelly, Dean of the University of Maryland School of Law. At the end of the interview, I was told that the Panel would recommend me for the appointment. I immediately headed for the Clerk's office to let Mike Kostishak know that I had been appointed. Happily, I strode into the Clerk's office and swung open the gate, but was stopped by Deputy Clerk Debbie Matthews. "I'm sorry, Sir," she said, "You can't come in here." "I think it's all right," I replied, "I'm the new Judge." "Omigod!" she said, and turned pale. I assured her that everything was fine.

In the afternoon of the same day, in the midst of a blizzard, Robert Glushakow, my law clerk at the Master's office, drove David Musgrave and me to Penn Station to catch a train to New York to attend a PLI bankruptcy seminar.

We had intended to fly out of BWI, but because of the bad weather, we opted for rail travel. I still remember wondering whether Rob's tiny Chevette would get up Charles Street through the deep snow at Mount Vernon Place, but it did. Because of the heavy snowstorm, the train was delayed for an hour, the trip took longer than usual and we didn't get into New York City until well after dark. It was not until the next morning that we heard that Air Florida Flight 90, a Boeing 737 carrying 79 passengers, had crashed into the 14th Street Bridge in Washington D.C., with only five survivors.

The seminar was one of the best I have ever been privileged to attend, and featured such bankruptcy luminaries as Professor Frank Kennedy, Arnold Quittner and Judges Herb Katz and Arthur Votolato. I now had a false sense of confidence and felt fully prepared to become a bankruptcy judge. Needless to say, I had more brass than brains. If I knew then what I know now, I might have been too intimidated even to apply. But ignorance is bliss.

I returned to Baltimore and began wrapping up my unfinished business in the Equity office. On several occasions, I met with Judge Lebowitz over lunch and had the pleasure of watching him preside in Court. One of the hearings involved a fee application filed by Rich Kremen in the case of L. B. Smith, which Judge Lebowitz granted after praising counsel's herculean efforts on behalf of the trustee. I saw Steve Derby for the first time in the bankruptcy court and heard Judge Lebowitz praise him as well. I also watched Judge Lebowitz conduct discharge hearings (five separate hearings all day every Monday) and marveled at his stamina and quest for perfection. Counsel and clients were required to attend. The roll was called at least three times. Orders to show cause were issued for those who were absent. The Judge examined every file to make sure that all the necessary papers were there. Countless reaffirmations were heard. The proceedings dragged on, but Judge Lebowitz' patience was endless. Many debtors were *pro se* and asked questions. Judge Lebowitz answered them all to the best of his ability without giving legal advice. He was a remarkable man. I realized that I was succeeding a great Judge and entering upon a position that would demand every degree of mind and spirit that I possessed.

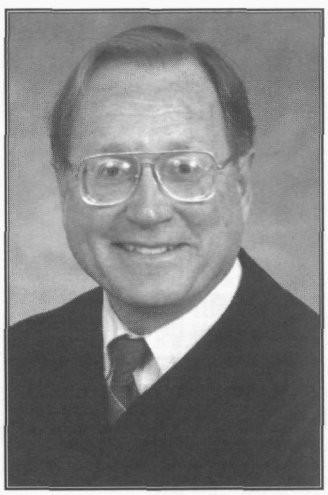
I left the Master's office on Friday, January 29, 1982, the same day that Judge Lebowitz left the bench. On Monday, February 1, I took the oath in a private ceremony in Judge Kaufman's conference room, the same room in which he and Judge Harvey had interviewed me the previous September. Judge Kaufman apologized for being late due to sun glare that morning on the Jones Falls Expressway. "Better you than I," I replied.

My only regret was the absence of my Mother, whose death nearly a year to the day was then and still remains a deep personal loss. I will always remember those in attendance that day: Mike Kostishak, Magistrate Judges Chick Goetz and Danny Klein, and my Father. The public ceremony was held on Monday, February 8, 1982, in the Ceremonial Courtroom, attended by several hundred of my closest friends.

An Embarrassment in the Practice of Bankruptcy

Miller v. Savings Bank of Baltimore, 10 B.R. 778 (Bankr. D.Md. 1981)

BY E. STEPHEN DERBY



E. Stephen Derby

Although my name does not appear in the published opinion in *Miller v. Savings Bank of Baltimore,* 10 B.R.778 (Bankr. D.Md. 1981)(Lebowitz, B.J.), I was the supervising attorney representing the Bank. The Savings Bank of Baltimore was a venerable Baltimore institution that has disappeared by way of merger.

The case arose at a time when the rules about applicability of the automatic stay were not as settled as they are today. In *Miller,* the Bank repossessed the debtor's automobile without knowledge that Miller had filed a Chapter 7 case. When it discovered shortly thereafter that Miller had filed a bankruptcy case, I was consulted about what the Bank should do. There was apparently some concern that if released, the vehicle might depart for places unknown in the mountains of a neighboring state. In lieu of returning the vehicle to Miller, I devised the misguided strategy to tender the vehicle to the Chapter 7 Trustee, who we anticipated would tell us to maintain custody of it for him at no cost to the estate. My recollection is that I drafted such a letter to the Trustee, and the Trustee made no demand for the vehicle.

The debtor, however, brought a complaint for return of the vehicle and for contempt for violation of the automatic stay. I assigned the matter to F. Thomas Rafferty, my senior associate at Piper & Marbury, to defend, and I did not anticipate that Judge Lebowitz would be so unimpressed with my strategy that he would not even mention it in his opinion. That opinion found the Bank in contempt for refusing to return the vehicle to the debtor and awarded compensatory damages to Miller against the Bank for Miller's lost pay when he had no transportation to work. Needless to say, it was a difficult conversation for me to advise the Bank that it had been held in contempt and had damages assessed against it for following my advice. I found it appropriate to make some downward adjustments before submitting a bill for services rendered.

This was not the end of my involvement with the *Miller* opinion. Some years later I selected the casebook of Warren & Westbrook, *The Law of Debtors and Creditors* (First Edition) for the Creditors' Rights class I was teaching at the University of Maryland School of Law. When the class came for me to teach the automatic stay, I opened the book and for the first time noticed the caption of the case the authors had included to illustrate what not to do after an innocent violation of the automatic stay. It was *Savings Bank of Baltimore v. Miller.* I then had another embarrassing opportunity to explain my imperfect advice to my students and to show them that their professor, who was a bankruptcy judge, might always be certain, but not always right.

A Mountaintop Experience

BY DUNCAN W. KEIR

The day I learned that I had been selected to be a Bankruptcy Judge was full of excitement, in more ways than one. It was March 15, 1993, a brisk, wintry day in Vermont, where my family and I were on a one-week skiing vacation.

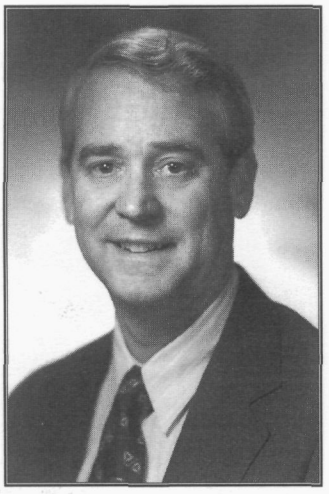
After skiing all morning, my wife, Lisa, and I and our two sons returned to our condo for lunch. The boys were anxious to ski the maximum number of runs and so headed to the slopes at record speed. After they left, Lisa and I proceeded to get ready for an afternoon back on the mountain. That evening we had reservations at a four-star restaurant nearby.

Having tugged on insulated bibs, ski boots and jackets, we were anxious to get outside to escape the heated condo, when the phone rang. Lisa answered it and said, "It's Anna and she says it's important." Anna Pacella-Holt was then my secretary at Maryland National Bank (now my judicial assistant). She said that Sam Phillips had called and requested that I be tracked down and asked to return his call as soon as possible. He was the Circuit Executive of the United States Court of Appeals for the Fourth Circuit, to whom I had applied the previous Fall for a newly-created fourth bankruptcy judgeship in the District of Maryland. As I dialed the phone, my heart was racing (maybe it was my body overheating in the ski gear).

Mr. Phillips greeted me warmly and informed me that I had been selected as the new Bankruptcy Judge. After congratulating me, he told me that the appointment would be effective after an FBI background check was completed. As an aside he told me that, in addition, Congress needed to pass a supplemental appropriations bill to fund the position but that was expected in early Summer and undoubtedly would be done by the time the background check had been completed. It later transpired that due to a power struggle between two senators, the funding was not approved until mid-November. But I digress.

After thanking Mr. Phillips who then rang off, I turned to Lisa and gave her the exciting news. We quickly realized that we already had in place a celebratory dinner set for the evening. We could not have planned it better.

Near the end of the afternoon we stood atop the otherwise deserted mountain ready for our last run of the day. Lisa sprinted off at top speed. I started in pursuit, albeit more cautiously. Halfway down the mountain she caught an edge on some golf ball-sized ice and suddenly went down. As I skied to her, she started to get up but immediately sagged back down in obvious pain. Heart pounding, I stopped, popped out of my ski bindings and gently helped her to try to stand up. Her right ankle was in pain and would not bear weight.



Duncan W. Keir

Now I was the one skiing at top speed to get help. I reached the bottom, asked the lift operator to call for a ski patrol and then hopped on the lift to get back to the top of the slope where Lisa was. I arrived just after the ski patrol found her. The two-member ski patrol splinted the ankle and we loaded Lisa onto the rescue sled.

I had to get back to the condo because our car was there. Off I skied again, frightened of catching my own ski edge, but knowing I was about to miss the last lift up the far side of the valley. It's a good thing the run was straight down on the bottom half because I was beyond control. I reached the condo, got in the car and drove back to the aid station where we placed Lisa in the back seat and drove to the nearest hospital in a neighboring state but not many miles away.

Several hours passed by the time X-rays were taken and the broken ankle put into a cast. I called from the hospital and cancelled our prized reservations. With Lisa again seated sideways in the backseat, we drove back to Vermont. Both of us were tired and hungry so we stopped at a small family restaurant along the way. The waitress quickly pushed chairs and table into a configuration where Lisa could support her cast leg straight out and we had dinner, toasting the appointment, not with fine wine, but with cold bottles of beer. Perhaps not "the best of times," nor "the worst of times," but nonetheless a memorable day, one that Lisa and I will never forget.

Roster of Maryland Chapter 13 Trustee *1979-2004*

Baltimore Division

Weinberg & Green
1979-1984

John Robinson
1979-1992

Ellen W. Cosby
1990 - present

Joel P. Goldberger
2000-2004

Mark A. Neal
2004

Gerard A. Vetter
2004-

Southern Division

Thomas L. Lackey
1979-2002

Timothy P. Branigan
2000 - present

Nancy L. Spencer Grigsby
2002 - present

Memories of an Entireties Nerd

In re Levy Ford, 3 B.R. 559 (Bankr. D. Md. 1980), aff'd. sub nom. Greenblatt v. Ford, 638 F.2d 14 (4th Cir. 1981) and Sumy v. Schlossberg, 46 B.R. 217 (D. Md. 1985), rev'd, 777 F.2d 921 (4th Cir. 1985)

BY GARY R. GREENBLATT

I had just graduated from the Law School of the University of Baltimore in May 1978 and been admitted to the Bar in June of that year. In 1979, I was appointed to the first bankruptcy trustee panel. I had no experience under the old Bankruptcy Act, and no one had experience under the Code. The *Levy Ford* case was assigned to me in my second year as a trustee. Frankly, when I first received the trustee file it was unattractive and my initial impression was that I would earn my $50 trustee fee and be done with the case. I can say without reservation that my first analysis was incorrect.

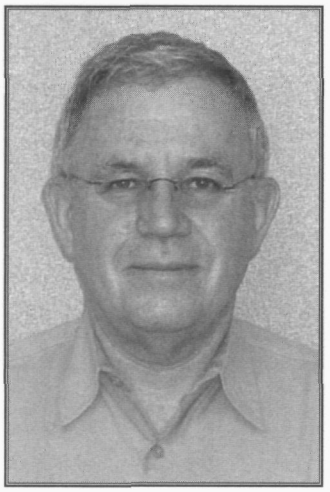
I remember that Judge Lebowitz called me one day shortly after I received the file. While I was aware of the tenancy by the entireties problems that were circulating at the time, I had no idea that the bankruptcy gods had selected *Ford* as the test case. In his characteristic way, Judge Lebowitz decided that the estate should and would be aided by seasoned counsel and directed me to move for the appointment of Charles Tatelbaum as special counsel to argue the legal points. Judge Lebowitz likewise believed that Mr. Ford was in need of similar aid and appointed Shale Stiller and Irving Walker at Frank, Bernstein, Conway and Goldman to represent the debtor. This was a unique experience, as counsel for both sides recognized that the principles of law that would be established by this case were paramount. The best word to describe the atmosphere of the case was collegial.

I remember having numerous meetings with Chuck Tatelbaum regarding the issues that were to be raised – whether any portion of the debtor's interest in the entireties property came into the estate and, if so, whether it caused a severance of the unities of title that would destroy the entireties ownership. I, of course, selected the winning argument that the debtor's interest came into the estate, whatever that interest might be. Chuck inherited the losing position that the filing severed the entireties. The case proceeded according to the grand scheme that Judge Lebowitz devised.

The hearing at the Bankruptcy Court level was impressive. Both Judges Lebowitz and Goldburn presided. Both sides advanced their positions, but I always felt that the decision had already been made, notwithstanding the oral arguments made at the hearing. The Bankruptcy Court held that the entireties property came into the bankruptcy estate of the husband, then was exempted out.

When we took the case on appeal directly to the Fourth Circuit, the three judge panel merely rubber-stamped the Bankruptcy Court's ruling. Frankly, when it came to the Fourth Circuit argument, all of the parties assumed the decision was preordained and all concerned seemed to have lost interest in the outcome. When the case was finally decided I was disappointed. What was intended to clarify the effect of bankruptcy on tenants by the entireties property simply reverted to the procedures that were applied under the old Act. Nevertheless, I must confess that there is a bit of pride knowing that *Greenblatt v. Ford* has been cited at least 134 times by other courts.

In this profession, it is unusual for one to



Gary R. Greenblatt

"... I wanted to give the Circuit an opportunity to get it all right."

Gary R. Greenblatt

get a second bite of the apple. But that is exactly what happened to me in 1984. After the *Ford* decision it occurred to me that all the talented counsel in the case had missed the critical point. No one ever focused on the real issue with respect to entireties property – the presence of joint creditors. I let my friends at the bankruptcy bar know that I was interested in taking up another appeal under the right fact pattern. Roger Schlossberg contacted me with a case he felt could bring to the Fourth Circuit the question that had gone unanswered in *Ford*. In the case of *In re Michael Sumy,* in which Roger was the Chaptern 7 trustee, he had taken the position that the mere presence of joint creditors permitted him to reach entireties property for the benefit of unsecured creditors. Eventually, we had to fine-tune the argument to limit the reach of the trustee to estate property subject to joint creditors, and not creditors as a whole. In the *Sumy* case, this more limited theory put the debtor's entireties interest in his house in jeopardy in the total amount of $1,400. Frankly, I thought the debtor would simply pay the $1,400 and avoid expensive litigation. Thankfully, he chose not to take the easy way out.

We took the initial decision from the Bankruptcy Court that the interest came into the estate but was exempt to the District Court. We briefed the matter but were never given the opportunity to argue the proposition of law we felt controlled the issue. Judge Ramsey's last sentence in his opinion went something to the effect: "Nice argument, but you'll have to make it to the Fourth Circuit." And so we did.

I remember that day of argument as if it were yesterday. I went to the office of the Clerk of the Fourth Circuit Court of Appeals and saw that the three judge panel I pulled had previously had decisions that were directly opposed to the positions to be advanced from the trustee's side. I had the temerity to argue that three of the cases decided by my panel were decided incorrectly. I remember that in argument, Judge Widener asked why I had taken the appeal. After all, there was only $1,400 at stake, and I remember answering him that the Fourth Circuit had gotten *Ford* half right and I wanted to give the Circuit an opportunity to get it **all** right.

And I remember the most satisfying event in my legal career up until then and even up to now. I remember Chief Judge Winter asking: "Even if you are successful, how can you sell tenants by the entireties property? What good is your theory if there are no practical results to be gained?" I cited Judge Winter to §363(h) of the Bankruptcy Code. He took a moment to refer to the statute, read it carefully, and when he came to the critical point, he slowly read aloud the following words: "The trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case an undivided interest as tenants in common, joint tenants, or ..."

And then Judge Winter came to what can only be described as a pregnant pause that seemed to last forever, and then he read the rest of the statute: "tenants by the entireties." I asked if he had any other questions and when he said, no, he didn't, I sat down. It was thrilling to know that I had at least made the Judges consider points of law they had not considered before arriving at the bench. This time, the Fourth Circuit held that entireties property was not exempt when only one spouse filed bankruptcy to the extent that there were joint creditors.

I also remember, sitting in the Bankruptcy Court Clerk's office in Rockville, when Judge Mannes came in and handed me the *Sumy* decision and simply smiled; then accused me of creating havoc with the Code's application.

Ever since these cases, I have been associated with entireties property cases. As Andy Warhol predicted, I got my fifteen minutes of fame and I don't regret one moment of it.

There Are Other Rewards Besides the Fee

BY CONSTANCE HARE

At my recent wedding to my law partner, Gary Greenblatt, we received both an unexpected and a delightful present.

We had a small wedding and hired a three-piece band to entertain our guests. Near the conclusion of the reception, Hope, the vocalist, came over and took us aside. She asked us if we remembered her. Gary didn't recognize her, but after just a few seconds I realized that she was a former client.

She went on to tell us that when she came to see us in 1996 she had just separated from her husband and was about to be laid off from her job. Her finances were in shambles and she did not know how she would be able to provide for her one year-old daughter. She thought her life was over.

When she came to see us about filing a Chapter 7 bankruptcy, Hope was terrified at the prospect, but understood she had no alternative. Hope recalled that after we assured her that there was life after bankruptcy, she felt a little better about her future prospects.

We filed her case, and her life went on.

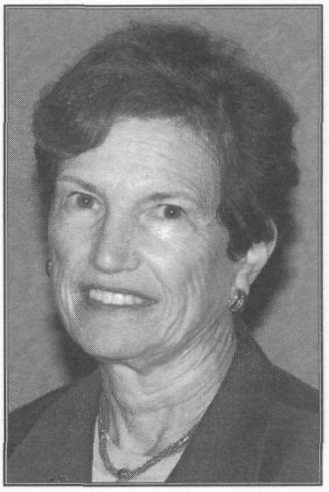
Hope told us that today she has a secure income, a house and, most importantly, a 401k plan. Her daughter is now ten years old and doing well. In fact, Hope is doing so well today that she is able to work fewer hours at her "day job" so that she can spend more time doing what she loves best – singing.

As a bankruptcy attorney, you never realize the impact you have in these small cases, as you never know how the debtor's life turns out after the bankruptcy is over. Hearing from Hope and realizing that our assistance truly had an impact on her life was probably the best present we received on our wedding day. Sometimes just hearing that you have made a difference in someone's life makes it all worthwhile.

Constance Hare

Bankruptcy Attorneys Lead the Way in *Pro Bono* Representation of Clients

BY WINIFRED C. BORDEN, MVLS EXECUTIVE DIRECTOR



Winifred C. Borden, MVLS Executive Director

Since 1991, the Bankruptcy Bar Association has played a significant role in meeting the needs of Maryland Volunteer Lawyers Service's low-income clients seeking to file for Chapter 7 bankruptcy. The Baltimore section of the Bankruptcy Bar Association has been particularly supportive of MVLS' efforts to find attorneys to represent our clients. When Irv Walker was Chair of that section, he began the practice of having me attend several of the monthly lunch meetings to seek volunteers; that started a tradition and I am now always able to find volunteers to accept cases. Since 1991, 633 lawyers have assisted almost 2,000 individuals from almost all areas of Maryland. Similarly, all of the judges of the Baltimore District are committed to increasing *pro bono* representation for low-income debtors and, during the Bench/Bar luncheons, regularly encourage volunteerism.

Maryland Volunteer Lawyers Service, Maryland's largest and oldest *pro bono* organization, recognized the Bankruptcy Bar Association for its support in 1992 by awarding it the Special Project Award. In 2001, MVLS awarded the Judges of the Bankruptcy Court of Maryland its Leadership Award.

The story of Dorothy Perry is illustrative of the support MVLS receives from the Bankruptcy Bar. Mrs. Perry, a 79-year-old Dundalk widow, had a long list of creditors asking her for far more money than she was able to pay. She called MVLS and her case appeared to be a fairly straightforward bankruptcy matter. But when a little digging showed that Mrs. Perry was being billed for all kinds of things she had never purchased – trips to amusement parks, tools from Home Depot, toys, maternity clothes and so on – it became clear that the case was not so simple after all.

More than bankruptcy, the case was about identity fraud. Mrs. Perry's daughter and son-in-law had sweet-talked her into giving them control of her finances and then used Mrs. Perry's name and the name of her disabled 42-year-old son, Thomas, to open some 20 fraudulent credit card accounts. Then they went on a spending spree, racking up over $200,000 in debt. Mrs. Perry's daughter also persuaded her mother to sign over her Social Security checks – her sole source of income – so she could "manage" her mother's finances.

When the mortgage on the son-in-law and daughter's house was foreclosed, they moved in with Mrs. Perry. While there, they allegedly locked the credit card bills in a safe and refused to let Mrs. Perry see them. Only when staff at the church where Thomas worked part-time as a janitor began receiving collection calls from credit card companies did a red flag go up signaling that something was wrong. The police were called. When they opened the safe, they found paperwork and credit cards in Mrs. Perry's name and her son's name. A 54 count indictment was filed.

Mrs. Perry's legal assistance was a team effort. Litigator Alison Goldenberg and bankruptcy attorney David Tayman at Gordon, Feinblatt, Rothman, Hoffberger & Hollander helped Mrs. Perry avoid bankruptcy by persuading most of the creditors to excuse her debts and helping her renegotiate her mortgage. In all, they invested more than 200 hours in the case. As Mrs. Perry says, "I don't know what I'd have done if not for them."

The Appealing Case of *Bank of America v. Stine*

379 Md. 76, 839 A.2d 727 (2003)

BY MARK F. SCURTI

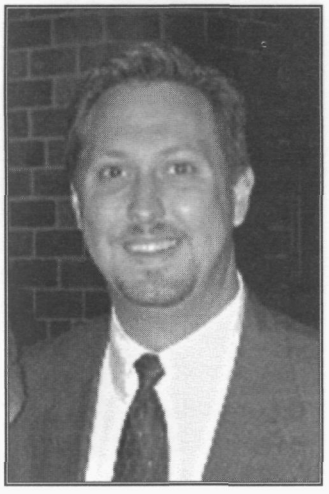
It was December of 1998 when Mr. Kenneth Stine came to my office seeking legal advice because his wages were being garnished. As with the hundreds of others before him, I started my standard intake with an eye towards recommending a Chapter 7 bankruptcy filing.

As part of my advice, I explained the bankruptcy process, the options available to him, and the fact that the money that had been taken from his wages could most likely be recovered because it exceeded $600 within the 90 days of the anticipated filing of his petition. He agreed to go forward and after paying our fee and the filing fee we filed his petition listing the garnishment on Schedule B and exempting it out on Schedule C. Shortly after the filing, and after the Trustee abandoned her interest in the garnishment, we sent counsel for the judgment creditor a letter requesting that the money be returned to the debtor through our office.

Several weeks went by and no check arrived. We followed up with a telephone call to the attorney's office only to be told that the check was not being returned because of a decision rendered out of the Greenbelt Division of the U.S. Bankruptcy Court by Judge Keir. The attorney's office faxed the opinion *In re Opher* to my office for my review. We were told that if we wanted to get the money we would have to file a complaint for recovery because of this decision, and they believed they did not have to return the money because the debtor could not exempt the garnished wages.

After advising our client, he directed us to go forward. The complaint was filed and a hearing was promptly scheduled before the Honorable E. Stephen Derby. The law firm of Wolpoff & Abramson filed their response on behalf of Bank of America, f/k/a NationsBank, citing among other points of law, the *Opher* decision. The basic premise of their argument was that Maryland Courts and Judicial Proceedings Article §11-504 (e) explicitly states that you could not apply the exemptions to wage attachments.

Reasoning that this was only a minor problem, we felt confident that we could overcome this obstacle in our argument before Judge Derby. The day of the hearing came and we were surprised to see the Honorable William A. Hill (Bankr. D. N.D.) sitting in Judge Derby's place. At the conclusion of the hearing Judge Hill rendered his opinion in favor of Mr. Stine thereby rejecting this new twist raised by NationsBank and upholding the Smoot decision by Judge Mannes published July 30, 1999 at 237 B.R. 875.



Mark F. Scurti

Expecting the check to come any day, I was surprised to find from Wolpoff & Abramson, not the check, but a Notice of Appeal to the United States District Court for the District of Maryland. I contacted my client and advised him of what had happened and what to expect next with the appeal. Consumer bankruptcy attorneys who represent debtors were in a quandary as to what to do with these conflicting decisions. Creditors were not returning garnished money and were forcing attorneys to file complaints, mostly without any compensation from their clients. Wage garnishments where now the subject of litigation across the state.

We agreed to go forward with the appeal on a *pro bono* basis as the issue was too important, not just for our client, but for all of our clients similarly situated. A brief was prepared and filed. I also prepared a flip chart showing the comparisons of our theory versus the creditor's and why our theory was correct. We appeared before the Honorable Chief Judge J. Frederick Motz for oral argument in the summer of 2000. Ron Canter, the attorney for NationsBank and I were questioned by the judge and we each held our

own. At the conclusion, Judge Motz rendered his opinion in September of 2000 in line with our legal theory, thereby rejecting the *Opher* decision indirectly. *Bank of America N.A. v. Stine,* 252 B.R. 902 (D. Md. 2000)

Less than a month later another envelope arrived from Wolpoff & Abramson, and again, expecting a check for our client, we discovered another Notice of Appeal, this time to the United States Court of Appeals for the Fourth Circuit. Now what? Once again I advised my client and laid out his options. At this point it was not about the money any longer, but rather the larger issue of recovery for debtors. To each individual debtor it may not be much, but to a judgment creditor, it can amount to thousands of dollars, if not more.

"... it made me uneasy as we really could not determine a sense of the judges' positions on the issue in front of them."

Mark F. Scurti

My client agreed to allow us to go forward, again on a *pro bono* basis. All along I had been discussing our progress to colleagues who were in a similar situation. At this juncture, I was contacted by attorneys Robert Grossbart and David Rosenberg, who offered their assistance on a *pro bono* basis as well, as the case would also affect their clients. This was incredible to have their help and input. We all had a stake in the outcome after all. Together we did our legislative history research and prepared our appellate brief for filing in Richmond.

The day before the oral argument we all traveled to Richmond with my family. I toured the courtroom to get my bearings and to get the feel of the courtroom, so as to lessen my anxiety the next day. As we left the courthouse I remember my mother asking me who we were arguing against and as I looked up I saw looming in front of us the NationsBank tower and simply pointed skyward. Images of David and Goliath swept through my head.

Oral argument day came and Mr. Canter went first. He was questioned about his theory and position and adeptly answered their questions. I followed anticipating interruptions, only none came. Upon completion of arguments the three judges, the Honorable H. Emory Widener, Jr (Abingdon, VA), the Honorable M. Blane Michael (Charleston, WV), and the Honorable Cynthia Hill (visiting from the 9th Circuit) all descended from the bench and shook our hands to end the day.

Back in Baltimore we all waited and speculated as to how they would rule. To our surprise, in September of 2001, the 4th Circuit certified a question of law to the Maryland Court of Appeals. Oy, Oy, OY !!! Once again I advised my client what this meant and he gave us the authority to go forward, still on a *pro bono* basis. Once the notice for oral argument came, off the three of us went to Annapolis for yet another round on January 7, 2002.

It really was exciting to be in front of judges from Maryland's highest court, all of whom I respected and some had gotten to know through my bar association activities. Once again, Mr. Canter went first and was questioned a few times by the panel. We knew this was going to be a challenge because the Court of Appeals was not often presented with cases involving issues of pure bankruptcy law. I started my argument by answering Judge Wilner's last question to Mr. Canter and jumped immediately into my prepared remarks. Again anticipating interruptions, none came. Although this sounds wonderful, it made me uneasy as we really could not determine a sense of the judges' positions on the issue in front of them.

After 23 months from the oral argument, and five years from the initial interview with my client, Chief Judge Bell handed us a unanimous opinion ending my year with a jubilant New Year 's Eve gift as the case had been decided in our favor, putting to rest a controversy that had plagued the bar for many years. *Bank of America v. Stine,* 379 Md. 76, 839 A.2d 727 (December 30, 2003). On March 15, 2004, the Fourth Circuit issued its opinion, reported as *In re Stine,* 360 F.3d 455 (4th Cir. 2004), in which it adopted the view of the Court of Appeals.

The experience was awesome to say the least. It is the reason I entered law school: to make a difference in a unique way and to give something back to the community. Clearly Mr. Stine did not have the resources to fight the battle along the track from the U.S. Bankruptcy Court, to the U.S. District Court, the U.S. Court of Appeals for the Fourth Circuit and the Maryland Court of Appeals. Even if he had, the economics of the amount in controversy would not have warranted it. Nevertheless, it was the significance of the case that motivated both Mr. Stine and me to continue the fight through the court system to give other people the benefit of having a final decision on these issues.

A Supreme Moment: *Citizens Bank of Maryland v. Strumpf*

516 U.S. 16, 116 S.Ct. 286, 133 L. Ed. 2d 258 (1995)

BY IRVING E. WALKER

It began simply enough. I think it was October 13, 1994, the day when the United States Court of Appeals for the Fourth Circuit issued its opinion in the case of *Citizens Bank of Maryland v. Strumpf ("Strumpf")*.[1] I was sitting in my office at Miles & Stockbridge, 10 Light Street, Baltimore, when Marty Fletcher, now a partner with Whiteford, Taylor & Preston but then an attorney in the Law Department of NationsBank N.A., with an office in the same building, walked into my office unannounced, expressing exasperation about the *Strumpf* decision.

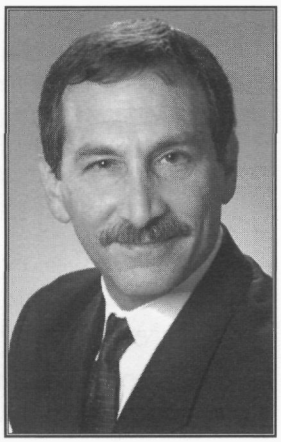
Marty knew the case was wrongly decided.[2] Stated simply, the Fourth Circuit held that the bank's administrative freeze of the debtor's bank account, prior to obtaining relief from the automatic stay, was tantamount to the exercise of a setoff right and therefore a violation of the automatic stay of 11 U.S.C. §362(a)(7). After reading the Fourth Circuit's decision, I discussed with Marty the point that Marty recognized the Fourth Circuit had missed – the Fourth Circuit seemingly overlooked the fact that the bank account balance is not money in the possession of the bank; it is a debt owed by the bank to the depositor and the bank's temporary refusal to pay the balance to the debtor (the so-called "administrative freeze") was based on the bank's right of setoff which the Bankruptcy Code expressly preserved.

Marty asked if I and others at Miles & Stockbridge would contact Citizens Bank and see if it would be willing to file a petition for *certiorari* with the United States Supreme Court.

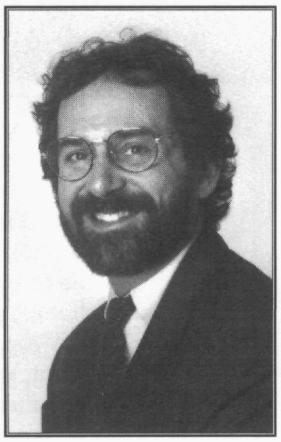
I listened to Marty's every word with great interest, but worried about the practicalities of trying to use *Strumpf* as a vehicle for Supreme Court review. At that point, the debtor had withdrawn his bank balance, so the only benefit of winning the appeal for the Bank would be eliminating the Court's imposed sanctions of $900. The cost of a Supreme Court case of course would be many times that amount.

Nevertheless, the idea was exciting and I took action. It just so happened that Citizens Bank was an existing client of Miles & Stockbridge. The relationship partner was Jefferson V. Wright, III, the Chair of Miles' commercial litigation practice group. Jeff and I called the Bank's in-house counsel, Daniel L. Rhoads, and informed him of NationBank's interest in the case, and we inquired whether the Bank would be willing to take the case to the Supreme Court. Several days passed, and Dan called Jeff and told him that the President of the Bank, Jeffrey Springer, had approved the filing of a petition for *certiorari* with the Supreme Court if Miles & Stockbridge would represent the Bank. Jeff and I quickly obtained firm approval to take the case on a reduced fee basis, and advised Dan that we would be delighted to represent the Bank in seeking Supreme Court review.

Jeff and I then formed our team for the case. In addition to ourselves, the team for the preparation of the petition included Tom Renda and E. Hutchinson Robbins, Jr. – "Hutch" – who took the lead for research. At the outset, we were not optimistic the Supreme Court would accept the case. Only a small percentage of cases are accepted, and it was not apparent that the case had the kind of profile that would attract the interest of the Supreme Court. After all, the stakes involved were only a few hundred dollars, and although the bankruptcy and district courts were split in their approach to the issue, there was no such split among the Circuit Courts - - the existing Circuit Court decisions agreed with the Fourth Circuit.



Irving E. Walker



Roger Schlossberg

The team did a great job on the *certiorari* petition, and then we got lucky. The Office of the Solicitor General contacted us about the case and let us know it was going to join in our request for Supreme Court review. It turned out that the United States government, particularly the Internal Revenue Service, had a significant interest in the case. A number of Chapter 7 debtors filed their petitions owing the United States for delinquent income taxes while also claiming an income tax refund for the most current tax year. Many of these debtors were successfully demanding that the government pay the debtors their tax refund, and when the United States asserted a right of setoff and refused to pay the refunds, the debtors were succeeding in obtaining rulings from a number of courts that the refusal of the United States to pay the tax refund was a violation of the automatic stay, holding the United States in contempt, and compelling payment of the tax refunds, thus effectively eliminating the government's rights of setoff.

With the Solicitor General's support, our petition for *certiorari* was granted – a very happy and exciting day indeed!

With the granting of the petition, the debtor's lawyer, John R. Owen, Jr., also formed a team to present the debtor's perspective on the issue. The debtor's counsel included Brian R. Seeber, Gregory P. Johnson, Mark E. Wolfe and Roger Schlossberg. After all briefs were filed, we eventually were notified of the date for our oral argument, Tuesday, October 3, 1995, the second day of the Fall term.

Like all stages of the case, preparation for oral argument was a team effort. While I was the one who would argue the case for Citizens Bank, my colleagues Jeff Wright and Hutch Robbins worked very closely with me to make sure I would be ready for the intense questioning that was sure to come from the Justices. As part of my preparation, I listened to audiotapes of some of the oral arguments before the Supreme Court, including a few cases argued by Thurgood Marshall, one when he was the United States Solicitor General and the other one of the great Civil Rights cases. Justice Marshall's gift of oratory was inspiring.

October 2, 1995 quickly arrived – the first Monday in October and the day before the oral argument. Before then, I learned that the debtor's counsel had agreed to allow Roger Schlossberg to make the oral argument for the debtor. This truly was an amazing development. Roger was not just one of my colleagues at the bar – we grew up on the same street, just four houses away from each other, and he was my best friend in elementary school and junior high school. As neither of us previously had seen a Supreme Court argument, we arranged to attend the first day of the October session and watched three arguments to acclimate ourselves to the impressive, humbling structure of the Supreme Court building and the conduct of the Justices. The night before the argument, we met in the hotel bar to spend a few moments together before heading to our rooms. I couldn't tell you what we talked about but if you know Roger, you will not be surprised to know there was much laughter.

On the day of our argument, I met my family, including my two sons (then 12 and 9), mother, sister, and nephews, at the courthouse. A limousine drove my family as well as Roger's mother from Baltimore to the Court. I met with Jeff and Hutch and we went inside the Court building together. Before the Justices came out for the morning arguments (ours was the second one), I stepped up to the podium and placed my hands on it, preparing myself mentally for the task at hand.

Unexpectedly, I felt a rush of emotions. To be honest, I was close to tears. I started thinking about Thurgood Marshall and that his hands were on the same podium at which I stood, in the same courthouse. Although I knew the *Strumpf* case was not one of the great cases of our day and would not change the world, I felt that I was part of something bigger than the case or me, that I was part of our system of justice that has helped shape our country and will continue to do so. Yes, I know many may consider these thoughts unbearably corny, but at that moment, when I turned around and saw my family in the audience, it was all I could do to keep my composure. I took my seat and moments later the Justices came out for the first case. Chief Justice Rehnquist was recovering from back surgery and did not attend the hearing, so Justice Stevens served as the acting Chief Justice. The first argument concluded, and it was our turn.

I won't dwell on the details of the oral argument. Let me just say a few things about it. After my first sentence, stating the issue, the Justices (excepting Justice Thomas) commenced their intense questioning, not even giving me enough time to complete my answer to one question before firing another one at me. The Justices likewise challenged Roger's every point, but Roger, undeterred and unbowed, stood his ground and did an excellent job articulating the debtor's position. In my rebuttal, I was able to string a few sentences together, without interruption, and used that opportunity to articulate the fundamental points on which we based our position. In what seemed like the blink of an eye, the argument concluded. The argument was challenging and exciting, and Roger and I, and our colleagues, thoroughly enjoyed every minute of it. Roger and I embraced outside the Court building, and I joined my colleagues, Jeff and Hutch for a celebratory lunch. We felt great about our prospects, based on our assessment of the Justices' questions, and it turned out that we guessed right.

On October 31, 1995, less than one month after the oral argument, the Supreme Court published its decision. I found out about it while I was attending the annual National Conference of Bankruptcy Judges, as someone was distributing a copy of the opinion at that day's luncheon. The Supreme Court found in our favor, unanimously, and reversed the Fourth Circuit, holding that an administrative freeze is not a setoff and is simply a temporary refusal to pay a debt in order to preserve the right of setoff. The decision was a perfect ending to the most memorable experience in my legal career, so far.

[1]37 F.3d 155 (4th Cir. 1994).

[2]So did Judge Paul Mannes. Although he decided the case at the Bankruptcy Court level and was affirmed by the Fourth Circuit, Judge Mannes' decision was compelled – even though he disagreed with it – by a prior decision of the Fourth Circuit. *See United States v. Reynolds*, 764 F.2d 1004 (4th Cir. 1985) (holding an IRS freeze of a debtor's tax refund was a setoff and a violation of the stay). At least that is what Judge Mannes told me, and I believe him!

From Notchcliff to Glen Meadows

Chapter 11 Of This Story Has A Happy Ending

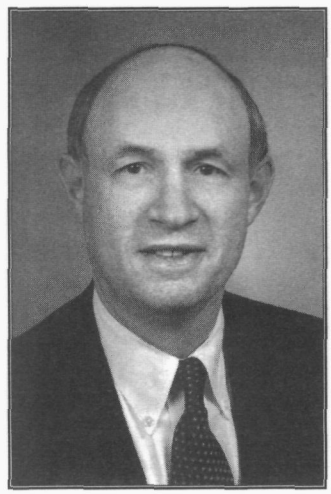
BY RICHARD L. WASSERMAN

Sometimes in our professional careers we are fortunate enough to have the opportunity to perform a lasting public service. Many of us have had the opportunity to reorganize successfully various Chapter 11 debtors. However, what is sometimes forgotten are those special cases when our efforts have a public interest and social mission component. This is such a story.

On June 30, 1988, two companies known as Freestate Management Services, Inc. and Notchcliff Associates, a general partnership, filed Chapter 11 bankruptcy cases in the United States Bankruptcy Court for the District of Maryland. Together, these companies owned and operated the Notchcliff Lifecare Community, located in Glen Arm, Maryland, on a beautiful piece of pastoral land, approximately 483 acres, in Baltimore County. Notchcliff was organized as a "for-profit" continuing care community for seniors, consisting of 215 residential units and 16 nursing beds. As of the filing date, there were 88 residents at Notchcliff, which number had grown to 96 by July 1988. Each of the residents had placed significant sums of money in escrow accounts to fund their residency and the operations of the community. After July 1988, the number of residents began declining as a result of attrition and an exodus of residents, due to growing concerns for their future and the future of the community.

On the filing date, the outstanding indebtedness with respect to the development and construction of the Notchcliff Lifecare Community was in excess of $22 million. The banks to which this indebtedness was owing were The Commercial Bank of Bel Air and nine New Jersey savings and loan associations with whom The Commercial Bank participated the loan.

For over a year before the cases were filed, it was apparent that Notchcliff had serious financial problems. The Office on Aging of the State of Maryland, the agency with responsibility over lifecare and continuing care communities in Maryland, was directly involved in attempting to address the financial problems at Notchcliff and its impact on the residents at the community. Notchcliff was facing a loss of its certificate of registration and foreclosure by its bank lenders. In addition, because Notchcliff Associates was a general partnership consisting of 11 individuals, many of whom were doctors, the banks were evaluating their rights and remedies directly against the partners.



Richard L. Wasserman

From the beginning of the Chapter 11 cases, the relations between the principals of the debtors and the banks were hostile and acrimonious. The Office on Aging was acutely concerned about the future of the community and its residents, who might become the innocent victims of the legal fighting between the debtors and their bank creditors. A Residents' Committee was appointed by the Court to represent the interests of the residents at Notchcliff during the bankruptcy cases. To compound the problems, a significant number of the New Jersey savings and loans were having their own financial difficulties, and there was in-fighting among the members of the bank group.

What the seniors who moved into the Notchcliff community had expected was that, in return for their substantial financial contribution to fund their residence and continuing care at the community and its health center, they would move into a vibrant, collegial residential community to live out the balance of their lives with other seniors in a pastoral setting in Baltimore County. This dream was in serious jeopardy. The Office on Aging had the Notchcliff problem at the top of its agenda.

Into this cauldron, I was appointed Chapter 11 Trustee in the Freestate case on November 29, 1988 and in the Notchcliff case on November 13, 1989. My mission was to try to calm the waters, get

control over the operations of the community and ultimately seek a long-term solution for the future of Notchcliff.

Recognizing that I would be unable to achieve my goals alone, one of my first acts as Trustee was to employ Jim Melhorn and EMA Management, Inc. as management consultants to the Trustee. This proved to be one of my best decisions. Jim Melhorn and EMA were respected professionals in the lifecare and continuing care industry in Maryland, enjoying for good reason the respect of the Office on Aging, peers, residents and other interested parties in the Notchcliff case. In my mind, there were numerous heroes in this story, Jim Melhorn and EMA clearly being among them.

"... it became clear that a not-for-profit sponsor for the reorganized community would be the preferable route to follow."

Richard L. Wasserman

With the assistance of EMA, efforts were focused on stabilizing operations and restoring confidence at the Notchcliff community. Meetings were held with the residents and their counsel, Fred Steinmann, to answer questions and keep them advised as to our progress. At the same time, significant time was devoted to developing a plan for the reorganization and future operations of Notchcliff. This was a very challenging task. It involved the joint efforts of the Office on Aging, EMA, and representatives of the bank group. Special thanks need to go to Maureen Dove, lead counsel from the Maryland AG's office for the Office on Aging, Fred Steinmann on behalf of the Residents' Committee, and Joanne Pollak and Mark Friedman from Piper & Marbury, counsel for the bank group.

During the course of this process, the Trustee and his advisors met with numerous interested parties in an effort to formulate a plan of reorganization. For a variety of reasons, including credibility and public confidence, it became clear that a not-for-profit sponsor for the reorganized community would be the preferable route to follow. The agreement of the banks to provide interim and exit financing, and at the same time recognize a substantial financial loss, was also needed to achieve a successful result for the future of the community. Continued licensure and regulatory approval through the Office on Aging was an additional hurdle. Retaining current residents and attracting new residents for the community would be the key to success or failure – this required finding a credible and stable sponsor for the reorganized community.

After intensive efforts, a plan was finally negotiated to transform Notchcliff through the Chapter 11 process into a new continuing care community to be known as "Glen Meadows." The sponsor for the new Glen Meadows community would be Presbyterian Senior Services, Inc., a Maryland non-profit corporation jointly formed by the Presbytery of Baltimore and Presbyterian Homes, Inc., a Pennsylvania non-profit corporation founded in 1927, which at the time operated approximately 15 facilities involved in healthcare, housing and community services for the elderly in four states. Glen Meadows would continue as a retirement community under the jurisdiction of the Office on Aging, but would no longer be offering lifecare contracts to its residents. To facilitate the Chapter 11 plan, a motion was filed seeking approval of a preliminary marketing program for the reorganized community under the sponsorship of Presbyterian Senior Services. This program was put together with the support of the Office on Aging, which had as part of its continuing review process set certain marketing and financial feasibility criteria that needed to be achieved before the plan could be implemented. Funding for the preliminary marketing program would be advanced jointly by The Commercial Bank and the Presbytery of Baltimore. Needless to say, the challenges were great at every step along the way. To make this a success required a team effort, hard work, and a lot of luck.

On November 27, 1990, almost two years to the day after my initial appointment as Trustee, Judge Schneider confirmed the Trustee's Chapter 11 Plans in the Notchcliff and Freestate bankruptcy cases. Thereafter, a closing was held to complete the restructuring and transformation of Notchcliff into the new not-for-profit Glen Meadows continuing care community, sponsored by Presbyterian Senior Services.

Today, Glen Meadows is a thriving continuing care retirement community offering independent and assisted living for over 200 residents, as well as skilled nursing care. Sometimes our efforts really do make a difference. This is just such a story. Chapter 11 in this case had a very happy ending.

September 11, 2001

BY JEANNE A. BRENNAN

I have been the Chief Deputy Clerk at the U.S. Bankruptcy Court for the District of Maryland since May 20, 2002. But September 11, 2001 will never be out of my thoughts.

I worked as the Administrative Manager in charge of the Fiscal and Administrative functions at the Bankruptcy Court in lower Manhattan (Bankr. S.D. N.Y.) and commuted every day from Princeton, New Jersey, on the train and then took the PATH [Port Authority/Trans-Hudson] subway system from Newark to the World Trade Center. On Tuesday, September 11, 2001, I came through the World Trade Center about ten after eight that morning. Every Tuesday there was the Farmer's Market at the World Trade Center. It was a gorgeous day, and I thought, "I must be really early this morning because so few of the booths have been set up." So I went to my job at the Bankruptcy Court in the Old Custom House (now officially "The Alexander Hamilton U.S. Custom House"), just blocks away from the twin towers.

When we first moved to New York from Maryland, my husband and I lived in Battery Park City, so we had tons of friends who wanted to visit us and NYC. I was well acquainted with the World Trade Center because we always took visitors there. We'd tell them all how the structural support for the towers was the steel on the outside, each floor is an acre in size, but there were no interior support columns. It was 110 stories and so just the footprints of the two towers were an acre each. And you take that times 110 floors, those towers held a lot of people.

On 9/11 my husband called me at about 8:55 a.m. and said, "Jeanne, run upstairs and look out your windows because apparently a small plane has crashed into the World Trade Center." That was the first report. I went upstairs to the Case Administration Department and looked out the window and saw the first tower flaming and debris flying into the air. Everybody ran to the windows and stood there transfixed.

I turned on the Court's TV to CNN. And then I went back to the CA area. As we were watching out the window we saw the second plane swoop down and fly into the second tower. Everybody started screaming. After the plane hit, there were thousands and thousands of papers flying through the air, like in the ticker tape parades that began just outside our windows. One co-worker, a lady, became hysterical and began screaming and crying. I went up to her and said, "You've got to get control. We have all these people here, we've got to keep them calm." And then I started closing the blinds.

After the second plane flew in I called my husband and said, "Oh, my God, Bill, another plane just flew into the Trade Center!" And then shortly after that, one of our employees said, "Well, my God, the Pentagon just got struck by a plane!" And I went, "Oh, my God, we're under attack!" My daughter and her husband worked in Washington. My son and his wife lived in Pittsburgh and I thought, "Oh, my God, my family! Am I ever going to see them again?" And then after that, I think it was when the first building fell we lost all our phone communications. Neither land lines nor cell

"Oh, my God, oh, my God, the twin towers are not there anymore."

Jeanne A. Brennan

phones would work. You got nothing but a busy signal.

It's strange the things you remember, for example, the vendors out on the street when the first tower fell. I was looking out on Bowling Green and I saw the bagel people and my favorite coffee guy, who was cowering under his cart. He didn't want to leave the cart because that was his livelihood.

A huge cloud of white stuff came whooshing down Broadway by Bowling Green Park, and people were just running, running down Broadway. I'll never forget that. And you couldn't see anything because there was so much stuff in the air. I thought they had bombed Trinity Church. A lady was running down the street with a six month old baby. They were covered with dust and ash when the marshals brought them into the building. Others covered with white dust also came inside the Custom House for shelter. We took them into a bathroom and tried to help them brush off the stuff.

After the first tower fell we decided to take everybody downstairs to the basement auditorium. I can't honestly say I felt the building vibrate when the first tower fell, I just saw the whoosh and the smoke. But when the second tower fell I felt a tremendous reverberation and people said, "Oh, that's the second tower falling! That's what they just said on the radio!"

Down in that basement auditorium hardly anybody spoke. It was eerily quiet. Some people prayed. At one o'clock we finally started letting staff go home. We distributed masks from a health kit to the employees before they went outside. When we ran out of masks, we used coffee filters. One lady cut up an undershirt and soaked the pieces in water for a number people to use as masks to cover their faces.

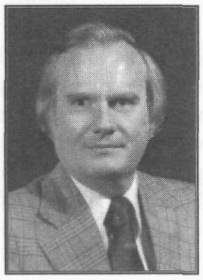
When telephone communications were restored, I picked up a voice mail from my husband, Bill, saying, "Stay in the building, those walls are two feet thick!" So I stayed in the Custom House that night, along with Kathleen Farrell, the Clerk of Court and several others, including Judge Robert E. Gerber and his wife, their three-year old son and his nanny. By that time, the National Guard was out patrolling the streets in Jeeps mounted with machine guns. Except for the National Guard, the streets were deserted. And the smell was so terrible from all the burning debris and the smoke was so, so heavy.

Judge Gerber's wife found something for us to eat and we tried to conserve it because we didn't know how long we would be there. The Judge and his family slept in his chambers. Kathleen and the nanny and I went into the other Judges' chambers and gathered up cushions and pillows off their couches for makeshift beds that we arranged on the floor of another room.

The next day, Judge Gerber and our immediate group crowded into his Subaru Outback and he drove us out of the city. We crossed over the Brooklyn Bridge and the traffic was terrible. Then we went all the way out around over the Bayonne Bridge. The whole time we were stopped every few blocks by police and the Judge would show his ID, and I'd show my court ID because I was sitting in the front with him while the others were in the back. We saw about 20 or 30 cars that had been crushed by falling debris on the side streets around the Trade Center. Finally we arrived at one of the PATH stations in New Jersey. PATH was letting everybody on for free. PATH took us to the railroad station at Newark and likewise, passengers were admitted on the trains for free. The conductors never collected tickets or anything. Nobody talked either on PATH or on the train. It was just the quietest thing, and this was the day after. The whole time we were leaving Manhattan, we all kept looking back and saw the smoke still billowing and we thought, "Oh, my God, oh, my God, the twin towers are not there anymore."

Assistant U.S. Trustees for the District of Maryland
1987-2004

*The **Baltimore** Office opened on August 21, 1987*

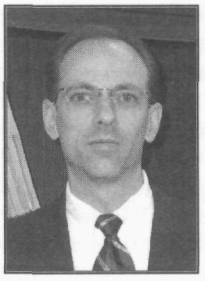


A. Grey Staples, Jr.
August 1987 - January 1992

Edmund A. Goldberg
(Acting Assistant U.S. Trustee)
January 1992 - July 1992

Baltimore Office staff

Karen H. Moore
July 1992 - May 2001



Mark A. Neal
May 2001 - present

*The Office of the U.S. Trustee moved to **Greenbelt** in February 1995.*

Greenbelt Office Staff

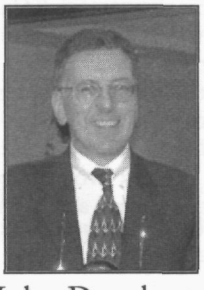
*The **Rockville** Office opened in 1988. Originally, the entire District of Maryland was covered by the Baltimore Office, located at 31 Hopkins Plaza, Suite G-13.*

Photo Unavailable

Jason P. Green
1988 - March 1992

Clifford J. White, III
March 1992 - March 2001

Julie Mack
(Acting Assistant U.S. Trustee)
May 2001 - March 2003



John Daugherty
March 2003 - present

Tall Tales, Anecdotes and Outright Fabrications

BY MEMBERS OF THE BANKRUPTCY BENCH AND BAR

HOWARD A. RUBENSTEIN:

Bankruptcy Judge Joseph O. Kaiser who left the bench in 1979 had a very keen wit. One day in the Judge's chambers I advised him that I had an order to present approving fees, the application for fees having been granted in open court. Judge Kaiser jokingly said he would get to my order soon and would sign it. I had a blank order of court in my briefcase. My handwriting was exceedingly similar to Judge Kaiser's handwriting. Teasing, I signed the copy of the order just as he would have and gave it to him and said, "Well your Honor, what can I get for this?" Wryly, he replied, "About ten years."

GEORGE W. LIEBMANN:

Judge Kaiser was an avid traveler who on one occasion embarked on an escorted bus tour of Austria and Switzerland. One of his co-passengers on this tour disappeared for a day when in Zurich and announced on his return that he had been visiting his Swiss bank. He is alleged to have had a fainting spell when he appeared as a debtor before Judge Kaiser sometime later. I am not personally privy to this case.

Judge Kaiser's unusual evidentiary rulings made it always worthwhile to object to damaging evidence.

He also had the habit of dozing off on the bench after lunch. In one memorable case (In re Fontainebleu Partnership, No.77-12K) , I represented the Prudential Insurance Co., Leon Forman of Philadelphia one of the debtor partners and Chuck Tatelbaum, another party in interest. We each had different devices for awakening the Judge. Mine was the unsubtle technique of accidentally knocking a couple of volumes of the Federal Reporter onto the floor. Chuck would tiptoe out of the courtroom and advise the Judge's secretary, who would re-enter and noisily fill his water glass. Forman would grab the nearest piece of paper, however irrelevant, would wave it vigorously in the air, and would approach the bench while bellowing, "I now ask that Exhibit 6 be marked in evidence."

There was much more pomp and ceremony in Act cases. In Chapter VII cases, there were discharge hearings, a frequent source of scheduling problems. In Chapter XI cases, there were the festive reunions known as Final Meetings of Creditors, at which some sympathetic holder of a minor claim who had been busy attending his parents' and children's funerals when the relevant notices were sent would appear and upset the applecart.

LESLIE J. POLT:

The more senior members of the Bankruptcy Bar remember Referee (later Judge) Joseph O. Kaiser as taciturn, reserved and enigmatic. Many times, after hearing protracted arguments in contested matters, the Judge would merely thank the counsel and indicate that he would take the matter under advisement, whereupon the dispute entered the black hole of "pending." As a young associate at Weinberg & Green, I was assigned what was at that time a fairly large ($125,000) lease versus disguised financing recharacterization case under the Act. More than one year after the case was briefed and argued, it was still "under advisement." This was not a good situation; it was creating attorney/client crisis of confidence. After several requests to the judge went unheeded, I concluded that any ruling, even adverse, would be considered progress by our client. I then took the bold (for an associate) step of informally requesting the Chief Judge of the District Court to intercede and ask Judge Kaiser to decide the case. Naturally, I anticipated the "wrath of Kaiser" to descend upon this novice, along with a defeat. Imagine my shock and relief, a few weeks later, to receive a favorable ruling and opinion from Judge Kaiser (later affirmed on appeal).

JIM GREENAN:

Judge Mannes had been on the bench several years. It was a very snowy day and parking at the Rockville Bankruptcy Court was very limited. I was driving around and driving around and finally found a parking spot that was right next to the entrance to the building.

PAUL MANNES:

One of the great events in the history of the Court was when we had a terrible storm when I was in Rockville. I had this great parking place right by the back door to the office building. It was a great space and I'm tooling in, and I know that no matter how hard it's raining that I can pull into my space right by the door.

And I get in this one time, and there's somebody in my space. I'd have gotten drenched if I'd had to walk across that parking lot. On a good day, I'd have just left the car and that would have been it. As it happened, this was not a good day, and I pulled in behind and blocked this person who could not leave without my being there.

JIM GREENAN:

So I parked in this spot and went in to attend to some court business upstairs in the clerk's office. I poked my head in the courtroom and Judge Mannes was on the bench and the courtroom was filled with people.

And someone came out and said, "Mannes is going nuts because someone parked in his parking space and he's just going crazy, and he's threatened to get the person."

So I didn't think anything of it. I went downstairs, went outside, and sure enough, there's my car and there's a car blocking it. And then it dawned on me that the car must be Judge Mannes' car.

PAUL MANNES:

The day went on and I really wondered who I had blocked in. And later that afternoon, a very apologetic lawyer showed up and explained how sorry he was and groveled and therefore I should let his automobile go.

JIM GREENAN:

Immediately, the thoughts ran through my brain of being held in contempt, being killed, or of ever after losing all my cases. So with great trepidation I

went into the courtroom, waited for the hearing to conclude and then approached the bench. So Judge Mannes leaned forward and Susan Kirkland, the courtroom deputy leaned forward, and I whispered, "Judge, I'm in your spot."

I expected this great wrath, but Judge Mannes turned to Susan and said, "What do you think the fine should be?" And Susan replied, "Two dozen doughnuts!"

PAUL MANNES:

Jim might think the reason he hasn't won a case in 20 years is because of that, but that's not the fact.

HOWARD A. RUBENSTEIN:

Several months prior to Judge Derby's appointment, I represented a debtor in Chapter 11. E. Stephen Derby, the lawyer represented the secured creditor. A cash collateral agreement and the proposed order authorizing the use of cash collateral was drafted by E. Stephen Derby. Several months after E. Stephen Derby became the Honorable E. Stephen Derby, I happened to have a Chapter 11 before him which required a cash collateral order. I told my client that I would have no problems drafting the order because I used the form order that had been prepared by E. Stephen Derby in a previous case. Feeling fairly confident on the passage of my order, I was quite surprised when I received in the mail a copy of the order with heavy black lines cris-crossing the entire width and length of the paper, citing omissions of not less than three rules of procedure.

Several days thereafter, I happened to see Judge Derby outside of the courthouse and I indicated to him that this was not an ex-parte contact, but that I was just curious as to the change in Judge Derby's form of order. He answered rather simply that when he donned the robe, all orders had to comply with each and every rule.

RICHARD GINS:

You know if you win every objection with Judge Mannes or Judge Keir, you're in a lot of trouble. Everyone who wins every objection is not going to win the case. You know you're in trouble with Judge Mannes if he turns his chair around and starts looking at the wall behind him with the eagle on it. You really know you're in trouble when Judge Mannes walks out and takes a little recess but says "Keep arguing your case!"

JIM VIDMAR:

Someone told me there was a place in the Bankruptcy Code where the Code said one thing and the legislative history contradicted it 180?, so whatever side you were on, you could argue that the Code was right or the legislative history was right. So I was going to argue before Judge Mannes that he should ignore what the Code said because the legislative history said the opposite.

So I made my argument and thought I was pretty clever, but Judge Mannes looked down and said, "Mr. Vidmar, this is a country courthouse. We don't pay attention to the legislative history."

MICHAEL J. SCHWARZ:

In the summer of 1979, I attended a weeklong course at Stanford University Law School on the then new Bankruptcy Code. I spent a glorious week, bicycling around the campus, and living with my wife and young son in a dormitory, with dozens of other bankruptcy attorneys and their families, from around the country. Going back to college and living on campus was a marvelous experience, even if only for a week. Many big-name bankruptcy attorneys, who were responsible for drafting the Code, George Triester, Ron Trost and Ken Klee, among others, were there to teach it. Duncan Keir was there as well, to attend the course. Years later, Duncan was appointed to the bankruptcy bench. He must have paid attention to the lecturers.

GARY R. GREENBLATT:

My partner, Mike Schwarz filed a Chapter 11 case for an entity called Urban Litho in late November, 1984. He had gotten Maryland National Bank to consent to an interim cash collateral agreement, but could not conclude a longer term agreement. Duncan Keir, now Judge Keir, represented the Bank. Judge Schneider scheduled a final hearing on a proposed cash collateral agreement for December 27.

Mike had filed a motion to be permitted to factor the debtor's new receivables with an outfit working out of New York. Mike then announced three days before the hearing that he was going skiing in the far west and that I had the privilege of representing the debtor in possession. Mike told me that there should be no trouble, even in the face of the Bank's objection, because there was no alternative and the deal was reasonable. That morning, I went off to court and found the courtroom packed with the employees of the debtor.

Unbeknownst to me, it turned out that Urban Litho had a large printing job for the U. S. Printing Office and was owed some $500,000. Urban Litho also owed an exorbitant amount of withholding taxes. The Bank's concern was that the Government would offset one debt against the other, thus depriving the Bank of its collateral. The Bank's theory was that if the debtor were to continue to cycle through its receivables long enough, the prepetition receivables would be exhausted, there would not be a prepetition receivable to offset the prepetition debt and thus the Bank, having received a replacement lien postpetition would retain its lien.

The hearing began, but Judge Schneider took a recess and called counsel into chambers. The Judge questioned the attorney for the factor, and discovered to everyone's amazement that under the loan documents, the factor stood to receive compound interest on its investment to the tune of 75%!

With that, Duncan exclaimed that the Bank would agree to the use of cash collateral if the debtor paid the Bank an extra two points on its debt, raising the interest rate from approximately 16% to 18%.

Messrs. Keir and Greenblatt returned to the courtroom and announced that the Bank would relent and allow the debtor to use its cash collateral and the debtor agreed to pay the Bank the extra two points. The Court had to decide between an agreement that would have the debtor pay its postpetition creditor 75% interest or pay the Bank 18% interest. It was a hard decision but without hesitation Judge Schneider approved the Bank's deal.

When the agreement was announced, the courtroom exploded to the applause of the workers. Mr. Keir was overheard to say that it was the first time in his career that he had gotten the debtor to pay an extra 2% on the Bank's debt and received a standing ovation!

DUNCAN KEIR:

I recall that when I first took the bench a few attorneys wanted to see if they could take the measure of the new Judge. I had put a gavel on the bench. Actually there's a little story behind it. My Father had made it when I was appointed to the Court and I was not

afraid to use it.

I didn't realize in those days when we had a live court reporter who sat right in front of the bench that when I hit the gavel on the block, it was right beside his head. And when I did that the first time, Marty, who was the court reporter, jumped to his feet, knocking his earphone off from his recorder, and screamed, "You've got to warn me before you do that!"

NELSON DECKELBAUM:

Sam Greenebaum was called "the little undertaker." He was very slight of build and was a bankruptcy maven for many, many years. Actually, businessmen didn't like to go to lunch with him because other people would think they were "going bad." So they kept away from Sam. But he was really a brilliant lawyer.

RICHARD GINS:

Roger Whelan was a very intelligent Judge, but I knew wasn't going to get along with him from the very beginning. We had just gone through the 60s, I still had my Afro, and Judge Whelan walks in the first day with the shortest crewcut you ever saw. So I knew my relationship with Judge Whelan was not going to get off to a good start.

ROGER SCHLOSSBERG:

Irv Walker and I argued *Citizens Bank v. Strumpf* in the Supreme Court in early October 1995. And afterwards I got slammed. I'm the only guy who argued before eight Justices of the Supreme Court and lost 9-0. (Justice Rehnquist was not there because he was recuperating from back surgery that he had the day before.) He came back and listened to the tape and couldn't wait to vote against me.

GARY ROSEN:

I was Judge Mannes' law clerk and looked over in the courtroom and noticed that Roger was wearing sneakers. So I scribbled a little note and passed it to Judge Mannes that said, "Get a load of Roger's shoes!"

So Judge Mannes read the note, grabbed the front of the bench and leaning over, said, "Nice shoes, Mr. Schlossberg!"

Without missing a beat Roger replied, "Oh yes, I've been a dresser from way back!"

MERRILL COHEN:

We were in a pretrial conference on a preference complaint I had filed against some bank, and the bank was represented by one of the large Baltimore firms. They sent a young associate who had apparently just started working there. The partner had basically said, "Here's the file, go the pretrial, you don't have to know anything, or do anything."

So the conference began before Judge Mannes, who asked me what the complaint was about, and I began to tell him. So he turned to this young attorney and said, "What's your defense?"

The attorney replied that he was just handed the file and told to go to court and that he didn't know anything about the case. At which point Judge Mannes said, "Well, you're the attorney here, I want you to tell me what this case is about. I see that you filed the defense of failure to state a claim upon which relief can be granted. What is that about?" And the Judge began quizzing him about every affirmative defense alleged.

Meanwhile, the guy starts shaking, I could see him physically shaking and sweating, and turning pale as a ghost. And then Judge Mannes said to the lawyer, "And by the way, don't you know it's our local rule that pleadings have to be two hole-punched? These pleadings weren't two hole-punched!" At which point the lawyer literally passed out. As he fainted, I caught him and propped him up.

The Judge didn't seem to notice. He never missed a beat and kept on explaining to this lawyer why, if was going to show up in court he had better know the facts of his case and can't rely on the fact that another lawyer sent him. Anyway, I never saw that lawyer in court again.

LESLIE J. POLT:

I represented the secured lender to a large Montgomery County healthcare facility, represented by Alan Grochal, in a case before Chief Judge Mannes. The case sparked much public interest and our monthly cash collateral hearings were covered by the local press, anxious to report whether or not the facility would remain open. Then, as now, my wife and Alan's wife worked as consultants for a national scrapbooking company, and occasionally attend workshops and unit meetings, usually in the evening. During one particularly contentious evidentiary hearing that continued through the afternoon, Judge Mannes stated the hearing would proceed to conclusion that day, and expressed regret for the lateness of the hour. In response, I mentioned to the court that it would not be a problem for Alan and myself since our wives were having dinner together that evening. The next day's *Gazette* report on the hearing featured a headline substantially as follows: "Attorneys Battle By Day, Socialize After Hours."

HOWARD RUBENSTEIN:

Judge Mannes had a tradition in his courtroom. Whenever a Chapter 11 plan of reorganization was confirmed, he would ring a ship's bell. In one particular instance I had represented a debtor whose principals appeared to be rather unsavory. At any rate, Judge Mannes signed the order of confirmation and was preparing to get off the bench when I stood up and said, "Your Honor, would you please ring the bell?" And he replied, "I don't think this deserves it, Mr. Rubenstein. You may be seated."

MIKE SCHWARZ:

In 1978, I took an assignment for the benefit of creditors, always the preferred way of liquidating the property of a small business. The State court judges were not that familiar with insolvency practice, they did not watch as closely as the bankruptcy judges, things were much looser and the practice was much more flexible in State court. I went to the office of the newly-appointed General Equity Master, Jim Schneider. He looked like such a young boy. That meeting began a friendship that has continued over 25 years. Jim regularly goes to the opera with my family and me. His wife Sue still refuses to join us. Opera. Phooey. A few years after that meeting, Jim was appointed to the bankruptcy bench, and Sue followed him as the General Equity Master. On the bench, he still looked like such a young boy. More than one client, when entering the courtroom, whispered in my ear, inquiring as to how such a young boy could ever be a judge.

JIM SCHNEIDER:

I liked opera but never saw one in person until it snowed one winter night in 1982 and I walked from my home on Tyson Street to the Lyric Theatre to see the Baltimore Opera Company's produc-

tion of *La Boheme*. After that, I was hooked.

A few years later Mike Schwarz told me that one of the five opening night season ticket holders in his family group was not going to renew her subscription (they were great seats in Row N) and that I was welcome to purchase the ticket. I agreed and with great anticipation, at the first night's performance, arrived at the theatre and took my seat next to Mike and Penny and their guests. Our seats were in the row just in front of Eunice and Harvey Lebowitz.

It occurred to me that when the Lyric had been renovated several years earlier, I had endowed a seat in memory of my late Mother. I had attended a donor reception sponsored by the University of Baltimore Educational Foundation and had seen the plate on the arm of the theatre seat, but had no idea where the seat was, although it now seemed to me that I was in its general vicinity. Just then, I lifted my right arm, and was shocked to see that I was sitting in the very seat that bore my Mother's name, –112. Not only that, but it was February 16, 1983, almost exactly two years since her death. It was a highly emotional moment when I excitedly passed the news down the row to my friends.

STANLEY SALUS:

The principal representative of a bank was on the stand testifying and there was a lot of controversy over the validity of the debt. We were harping away at this witness and he was not forthcoming and was evasive, and it was obvious that he was really irritating Judge Mannes. Finally the witness said, "Here's our promissory note that had already been introduced into evidence, and Paul – bless his heart – takes the note, rips it out of the file, crumbles it up, throws it in the trash can, turns to the witness and says, "That's what I think about your note!" And it was all downhill for the bank after that.

HOWARD A. RUBENSTEIN:

I vividly recall representing a pizza restaurant located at Loch Raven and Taylor Avenues in Baltimore. The restaurant filed the Chapter 11 and during the early stages of the case, an offer to purchase the debtor's interest in the lease was made by a national chain of bookstores. The restaurant was adjacent to a shopping center and was on a separate level from the strip center. The existing lease contained a use clause for a restaurant only. In order to assume and assign the lease it would be necessary to show that the debtor's restaurant was not a part of the shopping center and therefore the provisions of the Bankruptcy Code relating to shopping centers would not be applicable. The center had been owned by several former members of the Baltimore Colts. Their management agents refused to allow the lease to be assumed and assigned. Their recollection was hazy as to whether the restaurant was built at the same time as the center.

After testimony by the realtor that the restaurant may have been built some time after the center, an unsworn witness began to recite that he was fully aware of the center because his family shopped there every week and he knew from personal experience that the center and the restaurant were being built at the same time. Therefore, he was of the opinion that the restaurant was part of the shopping center and the provisions of the Code relating to shopping centers was applicable. The unsworn witness happened to be Judge Schneider.

I was then forced to make a career decision: Do I dare cross examine this unsworn testimony? Fortunately, or unfortunately, I had no other evidence of my own to rebut Judge Schneider's recollection. I subsequently learned from other former tenants that both the upper and lower levels of the shopping center were built at the same time.

The moral of the story: When the facts are similar to these, wait for a visiting judge to try your case.

JIM SCHNEIDER:

I don't remember it quite that way.

The witness was unable to answer Howard's question as to the date the shopping center opened, even after consulting his notes and the lease. That's when I piped up, "February 1960."

Howard stopped in his tracks and looked at me as if to ask, "How in the hell do you know that?"

To which I answered the unspoken question by saying, "That's where my Mother went food shopping when I was a kid."

The hearing proceeded and then I rendered my decision. That's all there was to it. But I have to admit that I prefer Howard's version of the story.

ABRAHAM L. ADLER, ESQUIRE

The M. Kovens Company was a complete department store installment house, selling everything from baby clothes through adult men and women's wearing attire, furniture, appliances, etc., all the needs of a family. It went into business in 1929, established by my father-in-law, Morris Kovens, at the height of the Depression, when he could not get a nickel's worth of credit, but held out signs in the windows stating, "YOUR CREDIT IS GOOD WITH ME." He and my mother-in-law worked side-by-side until 1970 when the business was sold to a national company. My wife was raised at the address of the store, 1335-37 W. Baltimore Street; from the time she was about six months old until she was ten when they moved to Pinkney Road in Northwest Baltimore. Her brother Irvin began working at the store as a young man, eventually running it, as my father-in-law grew older. The middle brother, Cal, worked there until he moved to Florida, where he became a resident and builder. It was truly a family business.

This story occurred sometime in the 1960s, when the credit manager answered the phone of an irate customer. The gist of the conversation was as follows:

"I don't make enough money every week to pay my bills. Therefore, I put all the bills in a hat and draw out three each week, which I pay. You're lucky in that your bill has been pulled out three of the last five weeks. If you keep calling or writing me about the lateness of my payment, I am no longer going to put your name in the hat."

My father and my uncle were the owners of Adler & Rothman, a wholesale sporting goods and general merchandise business located at 311 W. Redwood Street, which they maintained for fifty years until the passing of my father in 1978. When a customer (retailer) was late in paying his bills, my father's favorite story to that customer was to tell him, "Your mother carried you for nine months, I've carried you for twelve. Please remit."

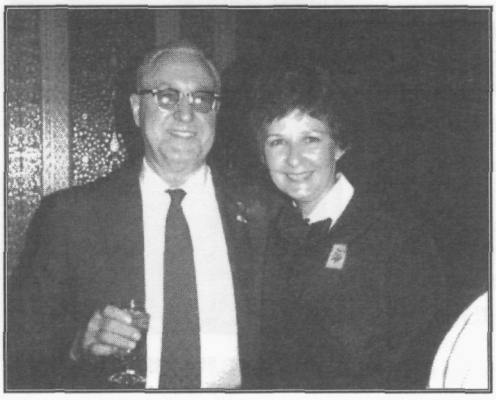
A Chronology of the United States Bankruptcy Court for the District Of Maryland

November 6, 1978	President Carter signs The Bankruptcy reform Act of 1978 into law, creating the U.S. Bankruptcy Code and establishing the U.S. Bankruptcy Courts.
Spring 1979	Discussion groups formed by attorneys in Baltimore and Hyattsville to consider the new Bankruptcy Code form the basis for the Bankruptcy Bar Association.
June 1, 1979	Harvey M. Lebowitz takes office as United States Bankruptcy Judge in Baltimore.
September 25, 1979	Michael Kostishak is appointed Clerk of the U.S. Bankruptcy Court.
October 1, 1979	Effective date of the United States Bankruptcy Code, which establishes the United States Bankruptcy Courts. Effective date of Local Bankruptcy Rules promulgated by the U.S. District Court.
May 11, 1981	Edmund A. Goldberg begins work as Deputy Clerk for Estate Administration in Baltimore.
July 1981	Judge Glenn J. Goldburn resigns.
August 1, 1981	Judge Roger M. Whelan (Bankr. D. D.C.) is assigned to sit in the District of Maryland. Judge Whelan holds court in Baltimore every Monday until December 1982.
August 3, 1981	The U.S. Bankruptcy Court vacates its Hyattsville office and relocates to Hungerford Drive in Rockville.
December 30, 1981	Paul Mannes takes office as United States Bankruptcy Judge assigned to the Rockville Division.
February 1, 1982	James F. Schneider takes office succeeding Harvey M. Lebowitz as U.S. Bankruptcy Judge for the District of Maryland at Baltimore.
June 28, 1982	The Supreme Court issues its plurality opinion in *Northern Pipeline v. Marathon Oil Co.,* 458 U.S. 50 (1982), declaring the Bankruptcy Code's broad grant of jurisdiction to be unconstitutional, but delays its effective date until October 4, 1982.
July 7, 1982	Judges Whelan, Mannes and Schneider sit *en banc* in Rockville to hear the cases of *In re Perry and Kotanko.* The opinion, 25 B.R. 817, is issued November 16, 1982.
October 4, 1982	Expiration of the first stay period in *Northern Pipeline.*
December 3, 1982	Judge Schneider holds first session of court in Salisbury.
December 24, 1982	Second extension of Northern Pipeline decision expires without remedial action by Congress.
September 14, 1983	Dedication of Courtroom 9C in the Garmatz Courthouse.
February 27-29, 1984	National Conference of Bankruptcy Judges holds special meeting at Crustal City, Va., to discuss efforts to obtain Article III status for bankruptcy judges.
June 29, 1984	Congress passes the Bankruptcy Amendments and Federal Judges Act of 1984 ("BAFJA"), P.L. 98-353, remedial legislation limiting the jurisdiction of bankruptcy courts under the Bankruptcy Code, in light of *Northern Pipeline.*

July 10, 1984	President Reagan signs the bill into law.
May 15, 1985	The U.S. District Court appoints Judge Paul Mannes as Chief Judge of the U.S. Bankruptcy Court for the District of Maryland.
September 15, 1985	Robert H. Bouse, Sr., retires as Chief Deputy Clerk; John H. Winkler, Sr., becomes Chief Deputy Clerk.
November 18, 1985	Earl M. Jordan's first day as Courtroom Deputy.
Spring 1986	First Annual Bankruptcy Bar Dinner.
May 28, 1986	Federal Bar Association sponsors Bankruptcy Law Seminar, featuring Ed Goldberg, Gary Greenblatt, Susan Griiser, Bill Hallam, David Rice and Judge Schneider, Courtroom 1A.
October 2, 1986	Judges Mannes and Schneider are reappointed to 14-year terms by the Fourth Circuit U.S. Court of Appeals.
October 27, 1986	The Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, P.L. 99-554, is enacted, which creates one additional bankruptcy judgeship for Maryland and expands the U.S. Trustee System.
August 21, 1987	The Office of the U.S. Trustee opens in Baltimore, Maryland. A Grey Staples is appointed Assistant U.S. Trustee in Baltimore, Jason P. Green is appointed in Rockville.
Fall 1987	The Bankruptcy Bar Association for the District of Maryland is formally organized. Lawrence D. Coppel is elected President.
December 9, 1987	E. Stephen Derby takes office as the third U.S. Bankruptcy Judge for the District of Maryland. Judge Derby is assigned to hear cases in Baltimore and Rockville.
March 2, 1988	The charter for the Bankruptcy Bar Association for the District of Maryland is filed and approved.
October 1988	First issue of the BBA Newsletter is published.
May 1, 1990	BANCAP implemented.
September 19, 1990	Courtroom 9B dedication held in lieu of BBA "State of the Court Address."
November 1, 1991	Chief Judge Paul Mannes elected President of the NCBJ.
May 29, 1992	Michael Kostishak leaves office as Clerk of the Court. The Judges appoint Deputy Clerk John H. Winkler, Sr., to the position of Acting Clerk.
June 1, 1993	Frank L. Monge appointed Clerk of the U.S. Bankruptcy Court.
November 12, 1993	Duncan W. Keir takes office as the fourth U.S. Bankruptcy Judge for the District of Maryland.
April 5, 1994	Naomi Hopkins Strolle's retirement party is attended by more than 100 well-wishers. Melanie Matesic is appointed Judicial Assistant to Judge Schneider.
October 3, 1994	Dedication of the new U.S. Courthouse at Greenbelt. The Rockville Division of the U.S. Bankruptcy Court relocates.
October 22, 1994	Bankruptcy Reform Act of 1994 (H.R. 5116) is signed into law, providing for jury trials in bankruptcy court, increased debt limits in Chapter 13.
October 31, 1995	U.S. Supreme Court issues its decision in *Citizens Bank v. Strumpf.*
November 4, 1995	Former U.S. Bankruptcy Judge Harvey M. Lebowitz dies.
April 24-25, 1996	Judge Schneider conducts first bankruptcy jury trial in the case of *Liebmann v. Curry,* a fraudulent conveyance action, resulting in a $225,000 verdict for the trustee/plaintiff. Counsel were Orbie Shively and Kevin Kobbe.

October 25, 1996	Richard C. Donovan is sworn in as Clerk of Court at a MICPEL program.
April 25-26, 1997	First Annual BBA Spring Break Weekend, Harbourtowne Golf Resort and Conference Center, St. Michaels, Md.
April 4-6, 1999	Federal Judicial Center sponsors continuing legal education seminar in Baltimore for 306 U.S. Bankruptcy Judges. BBA hosts a harbor cruise and reception.
March 31, 2001	Court adopts Local Bankruptcy Rule 9019-2, implementing alternative dispute resolution program.
June, 2001	The Pro Bono Resource Center of Maryland presents its 2001 Maryland Pro Bono Service Award to the Judges of the U.S. Bankruptcy Court for the District of Maryland at the annual convention of the Maryland State Bar Association.
October 17, 2001	The Maryland Volunteer Lawyers Service presents its Leadership Award to the Judges of the U.S. Bankruptcy Court for the District of Maryland "in recognition of their extraordinary recruitment campaign resulting in 116 new volunteers."
November 2, 2001	Judge Schneider succeeds Judge Mannes as Chief Judge.
December 9, 2001	Judge Derby is reappointed by the Fourth Circuit U.S. Court of Appeals to a second 14-year term.
January 14, 2002	Mark D. Sammons is appointed Clerk of the U.S. Bankruptcy Court.
July 31, 2002	The Court issues Administrative Order 02-03 implementing procedures proposed by the Bankruptcy Bar Association for complex Chapter 11 cases.
December 17, 2002	The Consumer Bankruptcy Bar forms a committee to pursue the status as a section of the Maryland State Bar Association. Alan J. Belsky is appointed chairman.
April 7, 2003	The U.S. Bankruptcy Court implements Case Management /Electronic Case Filing (CM/ECF) on a pilot basis.
April 21, 2003	CM/ECF is fully operational.
September 22, 2003	Judge Derby announces his intention to retire and serve as a full-time recalled judge.
January 1, 2004	Effective date of new Local Bankruptcy Rules, including for the first time, the Maryland State Bar Association Code of Civility.
May 7-8, 2004	Seventh Annual BBA Spring Break Weekend, Loews Annapolis Hotel, Annapolis, Md., at which time a special 25th anniversary video produced by Ronald J. Drescher is shown. Marc Kivitz and Adam Hiller perform a 25th anniversary song.
May 13, 2004	Announcement of the selection by the Fourth Circuit of Nancy V. Alquist, Esquire, as the next U.S. Bankruptcy Judge for the District .of Maryland.
May 14, 2004	The Board of Governors of the Maryland State Bar Association creates a Section on Consumer Bankruptcy. By July, the new section has more than 250 members.
September 20, 2004	Judge Alquist is sworn in as the fifth Maryland Bankruptcy Judge in a private ceremony in Greenbelt.
September 30, 2004	Public investiture of Judge Alquist in Greenbelt.
October 28, 2004	Twenty-fifth Anniversary Celebration of the U.S. Bankruptcy Court for the District of Maryland in Courtroom 1-A, Garmatz Courthouse, Baltimore, Maryland. A portrait of former Bankruptcy Judge Harvey M. Lebowitz is unveiled.

Personalities From the Past 25 Years



Robert H. Bouse, Sr. and Patricia Korman

MARTY BLOOM was the Deputy-in-Charge at Rockville until 1987, when he was appointed Clerk of the United States Bankruptcy Court for the District of Columbia where he served until June 16, 1995.

Madeline Cieselska and Nancy Walker

ROBERT H. BOUSE, SR., was the first Chief Deputy Clerk of the U.S. Bankruptcy Court, from 1979 to 1985. He came to the Court from what is now the Circuit Court for Baltimore City, where he served as Clerk of the Superior Court and later as Administrator of the Supreme Bench. After Bob retired, he continued to work on a *pro bono* basis in both the Baltimore and Rockville divisions.

Mary Cos and Terry S. Miller

MADELINE CIESELSKA was only one of two bankruptcy clerks in the U.S. District Court when she began her career in 1962 under the regime of Referee Joseph O. Kaiser. When the Bankruptcy Court officially opened on October 1, 1979, she was one of the original deputy clerks hired by Judge Lebowitz. Madeline retired in 1987 after 25 years' service.

Judy Coll and Arlene Kaplan

Edmund A. Goldberg

JUDITH A. COLL was a Deputy Clerk in the Baltimore Division from 1981 until 2002. Judy's career at the Court began as a Case Administrator and by the end she was Director of Procurement. During the Court's many construction projects, she was always present, often working late at night to make sure that everything was perfect. Beloved by all who knew her, she died in 2003.

MARY COS was a case administrator at the Bankruptcy Court in Baltimore from 1982 until her retirement in 1997. She was dedicated to her job and continued to work at the Court despite being ill. She died in 1998.

ETHEL ESKRIDGE was the Chief Bankruptcy Clerk in the U.S. District Court when Joseph O. Kaiser was Referee in Bankruptcy, and later U.S. Bankruptcy Judge. After Ethel retired in 1977, Erma Jane Hagert became Acting Clerk. Ethel Eskridge died in November 1983.

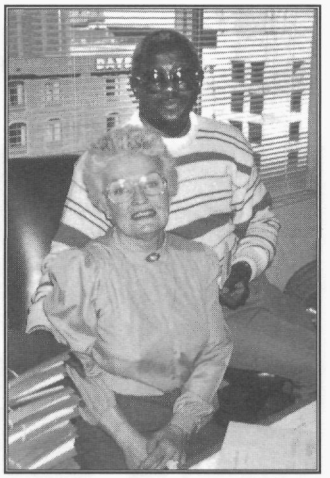
EDMUND GOLDBERG served in Baltimore as the Court's Estate Administrator, in charge of supervising Chapter 11 cases from 1981 until 1987, when he was hired by Assistant U.S. Trustee A. Grey Staples, Jr., as an attorney in the Baltimore office, where he continues to serve. Ed is well known and well loved by members of the Bar and the Clerk's Office for his kindness and sense of humor.

Lynne Borne Gravois

LYNNE BORNE GRAVOIS came to the Court in 1997 from the District of Columbia law firm of Cadwalader, Wickersham & Taft, when she became Judge Keir's electronic court reporter. Since 2000, she has been his Courtroom Deputy in Greenbelt and Baltimore.

ERMA JANE HAGERT has the longest tenure of any current employee at the U.S. Bankruptcy Court. She began her career at the Court in 1975 assisting Ethel Eskridge in the U.S. District Court. From 1977-79, Erma served as Acting Chief Bankruptcy Clerk.

EARL JORDAN was Courtroom Deputy to Judge Schneider from 1985 to 1998. He came to the Bankruptcy Court with 16 years' experience at the Superior Court and the Court of Common Pleas of Baltimore City. Judge Schneider called him "Magic Jordan," because of his knack or settling cases by bringing intractable parties together.



Earl Jordon and Naomi Hopkins Strolle

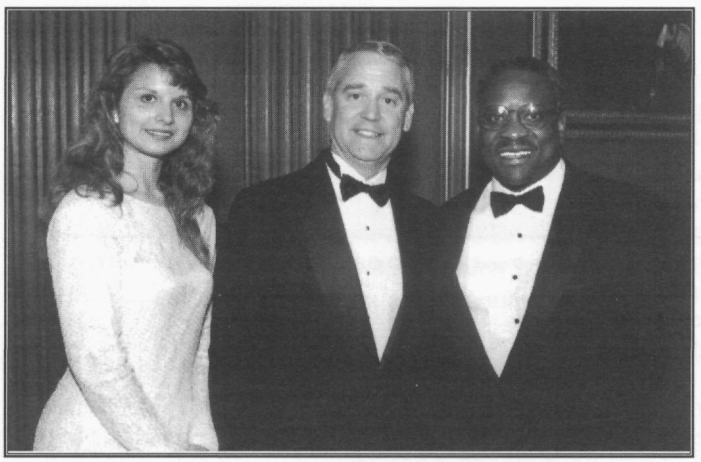
Erma Jane Hagert, Judge Kaiser, Madeline Cieselska and Polly Kaiser

ARLENE KAPLAN was a Deputy Clerk at the Bankruptcy Court from 1981until her retirement in 2001 . She was a case administrator before serving as financial clerk. Arlene was Judge Whelan's Courtroom Deputy when he sat in Baltimore as a visiting Judge from 1981-83.

SUSAN KIRKLAND has been Judge Mannes' Courtroom Deputy from 1981 to the present, keeping "order in the court" and order in the docket.

Susan Kirkland

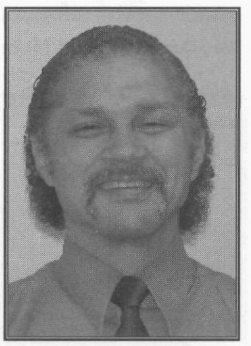
PATRICIA KORMAN was secretary to Michael Kostishak, first Clerk of the Bankruptcy Court, from 1979 until 1992. In order to save someone else's job, she took early retirement in 1994, at a time when the Clerk's office was forced to reduce staff. Pat and her husband, Al, retired to North Carolina.



Anna Pacella-Holt, Judge Keir and Justice Clarence Thomas

THOMAS LACKEY was the Chapter 13 Trustee in Hyattsville, Rockville and Greenbelt from October 1979 to March, 2002.

BOOKER LIVINGSTON has been Judge Derby's Courtroom Deputy since 1988. Before that, he was a Deputy Clerk in the Clerk's office of the U.S. District Court.



Booker Livingston

MELANIE J. MATESIC has been the Judicial Assistant to Judge Schneider since April 1994. At the time, she was secretary to Magistrate Judge James K. Bredar, when he was Federal Public Defender. She was the Judicial Assistant to the late U.S. District Judge Norman P. Ramsey, from 1982 until his retirement in 1992. She began her career as legal secretary in the office of the U.S. Attorney, from 1976 to 1982. She began her federal civil service as a stenographer with the U.S. Army Corps of Engineers from 1973 to 1976.

Melanie J. Matesic

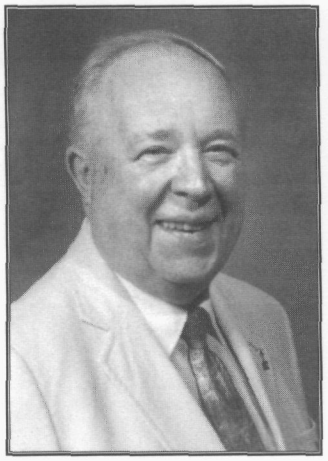
TERRENCE S. MILLER was the Deputy-in-Charge at Rockville and Greenbelt from March 1988 to April 1995. He is now Clerk of the United States Bankruptcy Court for the District of Arizona.

Patricia A. Rasinski

TERRY SPIDELL MILLER came to work at the Bankruptcy Court in March 1980 at the age of 18 and served as a telephone operator, claims clerk and motions clerk. By the time she left the office in February 1990 to join the staff of the U.S. Trustee in Baltimore she had worked her way up to the position of financial administrator.

ANNA PACELLA-HOLT has been Judge Keir's Judicial Assistant since his appointment in 1993. Before that she was his legal secretary when he was a partner at Miles & Stockbridge and house counsel at Nations Bank.

NANCY ADAMS PORTER has been Judge Derby's Judicial Assistant since his appointment to the Bench in 1987. She came to the Court with him after serving as his secretary at Piper & Marbury for 13 years.



John Robinson

PATRICIA A. RASINSKI was a longtime Deputy Clerk at the Bankruptcy Court before being appointed Judge Derby's Electronic Court Reporter. Patsy brought to the Court a ribald sense of humor coupled with a devout religious faith. She died in 2003, survived by her husband, Stan, and a sister, Jackie Weslowski, a retired Deputy Clerk of the U.S. District Court.

Nancy Adams Porter

JOHN ROBINSON was the Chapter 13 trustee in Baltimore from 1979 until his retirement in 1993. Before his appointment he was a consumer credit counselor with a local agency. John's kindness and humanitarianism marked him as a very special man. He died in January 1995, survived by his wife, Betsy, and a multitude of friends.

Frank L. Monge, Christina Wohlfort, Patsy Rasinski and Judge Derby

John H. Winkler, Sr.

LUANA SKIBIEL was the Deputy-in-Charge of the Bankruptcy Clerk's office in Hyattsville and Rockville for many years until she was succeeded by Marty Bloom.

NAOMI HOPKINS STROLLE began her career as legal secretary at the firm of Hoffberger and Hollander in 1959, where she worked for Harvey M. Lebowitz. This was before the firm merged to become Gordon, Feinblatt, Rothman, Hoffberger & Hollander. When Judge Lebowitz was appointed U.S. Bankruptcy Judge in 1979, she came with him as his Judicial Assistant. When Judge Schneider succeeded Judge Lebowitz in 1982, she continued with him until her retirement in 1994.

NANCY WALKER has been Judge Schneider's Courtroom Deputy since Earl Jordan's retirement in 1998. Before that, she served as electronic court reporter. She began her service at the U.S. Bankruptcy Court in 1982, as a notice clerk and counter clerk. She began her court career as a Deputy Clerk in the U.S. District Court from 1971 to 1976.

JOHN H. WINKLER, SR., was recruited by Judge Lebowitz from the Court of Common Pleas to be Courtroom Deputy in 1979. After Judge Schneider came to the Bankruptcy Court in February 1982, John continued to serve in that capacity until 1985, when he was appointed Chief Deputy Clerk. Before his retirement n 1998, he served twice as Acting Clerk, from 1992-93 and again in 1996.

Mary Lee Zimmerman

CHRISTINA WOHLFORT served as Judge Derby's temporary secretary before Clerk of Court Frank L. Monge recruited her to be his full-time secretary from 1993 to 1996. When he was appointed Clerk of the U.S. District Court, she went with him and continues to serve as secretary to Felicia Cannon, the current District Clerk.

MARY LEE ZIMMERMAN has been the Judicial Assistant to Judges Goldburn and Mannes since her appointment in 1981. From 1985, to 2001, during Judge Mannes' tenure as Chief Judge, Mary Lee helped direct the administrative functions of the Court and planned the agendas and recorded the minutes of the judges' meetings.

In Memoriam

JACQUELINE BENEDICT-McMANUS
(1944-2002)

JUDITH A. COLL
(1941-2004)

MARY ANN COS
(1928-1998)

YVETTE LINDSEY
(? - 1999)

PATRICIA ANN RASINSKI
(1935-2003)

JOHN ROBINSON
(1924-1995)

MARGARET K. SNAPP
(1919-2001)

A. GREY STAPLES, JR.
(1935-2003)

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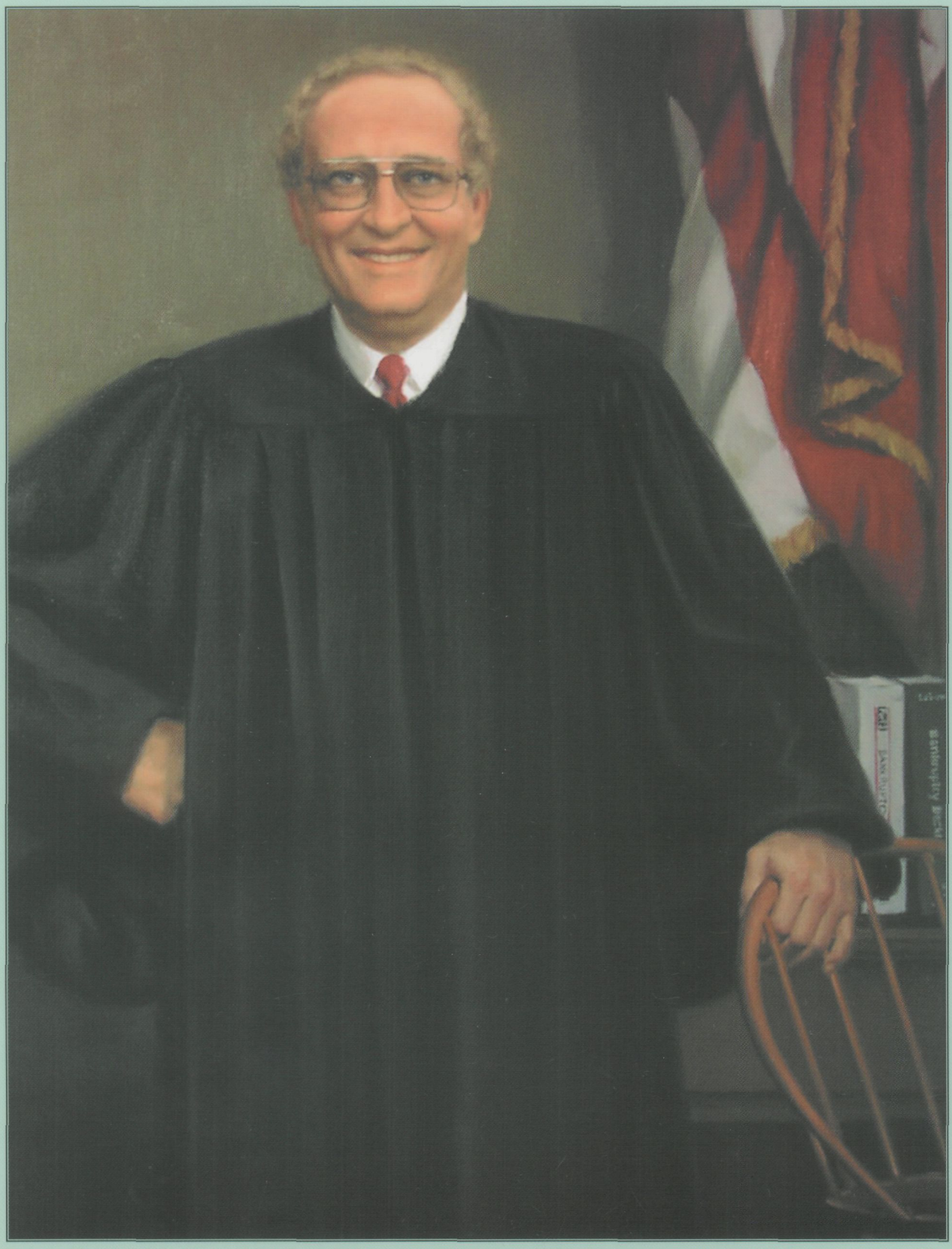

Portrait of Former U.S. Bankruptcy Judge Harvey M. Lebowitz by Ned Bittinger (2004). This portrait was commissioned on the occasion of the 25th anniversary of the United States Bankruptcy Court for the District of Maryland by the Bankruptcy Bar Association for the District of Maryland through the generous contributions of private donors listed on the inside back cover.