

## **Passing the Torch** *By Richard Stageman*

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It is said one should never look back because something may be gaining on you. I should not have looked back. Gaining on me is the Gramm-Rudman-Hollings Act, 380 cases filed in April, too much conflicting authority interpreting a statute resembling a camel created by a committee, and Father Time. These are collectively a good reason to retire. However, the real reason I am leaving is much simpler. Twenty-five years as a referee and bankruptcy judge is enough, and 50,000 cases (not proceedings) are more than enough. It is time for a younger and fresher mind and body to take over. It is not that I'm decrepit: quite the contrary, I still have the energy and desire to pursue new enterprises. I am proud to have served so long in the federal judiciary, and witnessed the changes that have taken place. It is about some of those changes that I wish to address my successor and the new generation of bankruptcy judges.

There have been changes in the bankruptcy law to be sure, but not really all that much. The "core" proceedings of today parallel the "summary"<sup>2</sup> proceedings of yesterday both as to the law and its administration. The present "non core" matters were the "plenary" matters of the Bankruptcy Act. Plenary matters have not changed. They were matters the law forbade the referee to handle, but in practice were nearly always disposed of by them. The pervasive consent to jurisdiction was the rule rather than the exception. In the words of a late good friend, Eighth Circuit Judge, previously a District Judge, "District Judges don't know anything about bankruptcy, and don't want to know anything about bankruptcy." That quote from the early sixties is no less true today.

What has changed is the atmosphere in which all these recurring and ever increasing legal problems are met and solved, and the parties and public served.

Referees in my early days were very denigrated, and once referred to by a U.S. Senator as "not such a select bunch." If someone deigned to call you judge, it was generally in a moment of confusion, with a nervous laugh, or a smirk. Others, as they happened to be moved at the time, called you referee, mister, judge, trustee or commissioner. I was once introduced to a man in the Omaha airport as referee Stageman, to which he queried "Big 8 or Big 10."

Referees later became judges because they started acting like judges, serious about the dignity of their courts and the importance of the legal endeavors they were engaged in. "Judge" now rolls easily off the tongues of our professional brothers and sisters as well as the laity.

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<sup>1</sup> Judge Stageman's article first appeared in the ABI Newsletter, June 1986.

<sup>2</sup> It is difficult to say which is the more unfortunate label.

When I was first appointed, Chief Judge Roy L. Stephenson said to me, “Dick, make the Bankruptcy Court a ‘real’ court.” Others will have to measure the degree of my success in the domain of judicial process, but I can measure the success in way of improvement of the trappings of that process. Trappings which permit one to act like a judge because the world calls one judge and treats one as a judge.

There was the adoption of the judicial robe not heard of in the late fifties. Judge Arnold Adams of Arkansas when the idea arose said to some of his colleagues that if he showed up in a robe at his cracker barrel court sites, folks would think the Pope had come to town. Not so today.

What was once a green metal desk on a faded green platform in a mailroom filled with folding chairs is now a walnut paneled “court” room which the local nonbankruptcy judges envy. The dilapidated desk in the mist of the referee’s clerks is now a Judge’s Chamber where any judge could proudly and comfortably serve the Queen tea. A busy word processor has replaced a manual typewriter: a working library, a copy of the Code, and two efficient law clerks, my overtime hours.

I do not dwell on the past to recount what some have perceived as slights or indignities. Those that do are making a serious mistake. The bankruptcy judges have not raised themselves by their own bootstraps alone. There has been the influence of the great caseloads and case sizes. There has been a recognition and acceptance by other judges of the federal courts. Most of the improvements I have mentioned came about because of higher court judges, Congress and the Administrative Office, not in spite of them.

Lastly, since the Referees Salary Act of 1946, there has been a cadre of unselfish and extra talented colleagues who have worked without hesitation, stint, or backward look to improve the administration of the bankruptcy laws. It is too long a list for here, but some names I know and admire come easily to mind:

Carl Friebolin, Ed Covey, C.H. Weelans, Aza Herzog, Estes Snedecor  
Elmore Whitehurst, Dan Cowans, Bill Washbaugh, Jake Dim, Bob Morton, Saul Seidman, Joe Lee, Conrad Cyr, Clive Bare, Bill Thinnes, John Copenhaver, Dean Gandy, George Paine, David Kline, and Ralph Kelley.

The new, and to be appointed bankruptcy judges, stand on a threshold to greet a new, intelligent, eager, and sophisticated bar. You are a “select bunch.” You prove, upon surviving the arduous selection process, that you are also intelligent, eager, and sophisticated.

Your rewards whatever they prove to be will not be gained by any organization, committee, or agent, but by the individual worth of your leaders, and your own performances as judges. Serve well and reward will seek you out. You are special people and the Constitution of the United States has made you responsible for what Justice Frankfurter called a “Federal Specialty.”

