BANKRUPTCY PRACTICE IN COLORADO

A. Bruce Campbell and Frank D. Tsu*

A. TERRITORIAL TIMES TO 1950

During the late 1860's the area of the United States comprised of the state of Kansas and the Territories of Colorado, Oklahoma, New Mexico, Utah, and Wyoming contained little consistent federal presence. [1] The territorial federal courts' recognition and adherence to federal laws such as the 1867 Bankruptcy Act was inconsistent at best. Economic development in this area of the country lagged far behind the eastern and western coastal regions of the nation. Not long after the 1867 bankruptcy law was enacted, newspapers within the state of Kansas and the territory of Colorado began to carry stories on bankruptcy actions in the district courts.[2] Scattered newspaper accounts are the primary source that recounts early bankruptcy practice in first the territory and then the State of Colorado.

In 1869 the *Rocky Mountain News* published notice of a sale of valuable mining property in Colorado. [3] The named bankrupts had been adjudicated by the Federal District Court in Eastern Missouri, which was conducting the sale. Papers such as the *Rocky Mountain News* continued sporadically to publish stories about amendments to the federal bankruptcy law and bankruptcy cases involving assets within Colorado.[4] For example, in 1872, the paper published an article about an involuntary bankruptcy case that had been remanded to the Colorado Territorial District Court from the United States Supreme Court and was to be conducted as a jury trial in order to ascertain whether the respondent debtor had committed an act of bankruptcy as his creditors had alleged in their petition. [5] In mid-August 1876 the *Rocky Mountain News* published a story on the appointment of a creditors' assignee to handle the case of a voluntary bankruptcy filing in the federal court within the then state of Colorado.[6] News of debtors being granted discharges in federal court and amendments to the bankruptcy law continued to be published in sporadic fashion. In March of 1877, the *Rocky Mountain News* published the local bankruptcy court rules adopted by

---

* A. Bruce Campbell served as a bankruptcy judge in the District of Colorado from 2001 to 2015; Frank D. Tsu is a 2008 graduate of the University of Denver Sturm College of Law who practices in Denver.

[1] The Federal Courts of the Tenth Circuit: A History 6-10 (ed. Hon. James K. Logan, U.S. Court of Appeals for the Tenth Circuit, 1992).
[2] Kansas as the first state in what is now the Tenth Circuit entered statehood on January 29, 1861 as the 34th state to join the Union.
[3] *Assignee's Sale of Valuable Mining Property in Colorado*, ROCKY MOUNTAIN NEWS, April 30, 1869, at P.1, C.3.
[4] *Congressional News*, ROCKY MOUNTIN NEWS, March 5, 1871 at P.1.
[5] Cases before the District Court, ROCKY MOUNTAIN NEWS, December 20, 1872, at P.4, C.2.
[6] *D. Lowenstein Appointed as Assignee by District Court in Case of Bankrupt Adjudged Upon His Own Petition*, ROCKY MOUNTAIN NEWS, August 19, 1876 (Colorado entered statehood on August 1, 1876 as the 38th state).

Judge Moses Hallett of the Federal Court for the District of Colorado, thereby notifying practitioners and the public alike.[7]

The number of bankruptcy cases in Colorado, and Denver in particular, rose in the early 1900's. Court records from 1898 indicate that one hundred and nineteen bankruptcy cases were filed that year. At the end of 1900, court records reflect five hundred twenty-nine bankruptcy case filings. By December 1903, court records reflect a total of one thousand one cases filed for the year:[8]

Records of the Denver Bankruptcy Court contain the involuntary case of William S. Moraud, filed in May of 1899, which made interesting defensive use of the option to elect a jury.[9] In response to the involuntary petition filed by his creditors, the defendant debtor filed a demand for a jury trial. The record indicates that neither a referee nor a trustee was ever assigned. Rather, in response to the defendant debtor's demand for a jury, an agreement of the creditors was filed whereby the case was to be dismissed at the cost of the petitioning creditors. Referee Jacob B. Philipps was later assigned to enter the order, which would be approved by the district court, dismissing the case.

For the years 1898 through 1904 the number of men appointed to serve as bankruptcy referees in Colorado also increased. Candidates looking to be appointed to the position of referee would solicit the district court with individual letters and letters of reference. Often inexperienced candidates seeking an initial appointment would submit several reference letters in an effort to enhance their chances of being appointed. The campaign to re-appoint referee J.M. Brinson in January of 1906 involved several such letters that were sent to District Judge Moses Hallett. Several attorneys from the Cripple Creek area, where Referee Brinson served, respectfully urged Judge Hallett and the district court to see that Referee Brinson would be his own successor. In support of his own re-appointment, Referee Brinson wrote that he would not only accept the reappointment, but gladly welcome and very much appreciate it. There would often be a petition of signatures in support of the candidate for referee. [10]

Referee William B. Harrison was one of the original appointees who began serving as referee in Colorado in 1898. A letter of April 8, 1920, from Referee Harrison addressed to Charles W. Bishop, then clerk of the United States District Court in Colorado, contained an affidavit signed by Harrison. [11] In that

---

[7] *Rules of Bankruptcy Adopted by Judge Hallett,* ROCKY MOUNTAIN NEWS, March 22, 1877. Judge Hallett was the first federal district judge in Colorado.
[8] Federal Court Archives for the District of Colorado are located at the Federal Center in Lakewood, Colorado.
[9] *Id.*
[10] *Id.*
[11] *Id.*

affidavit Referee Harrison attested to a list of expenses incurred by the trustee in the course of administering an estate. Harrison stated that based on these facts the court would be justified in allowing the trustee to pay out of the assets of the estate all actual expenses incurred. The accompanying list of expenses included everything from the referee's expenses for office rent and utilities to stenographic work related to the preparation and transmission of notices and transcripts. The total expenses incurred were listed at one thousand and fifty dollars. During this era funding and administration of the bankruptcy process had little uniform oversight and was largely left to individual districts or the referees themselves.

Throughout the initial decades of the twentieth century turnover among Colorado bankruptcy referees remained high. Referee Frederick W. Heath retired as referee in Denver in 1911 in order to relocate with his family to California. After being re-appointed referee in 1904, Robert Kerr left his position in Colorado Springs to become a county court judge. Referee C.J. Moynihan, who practiced law with William Lee Knous before Knous was appointed United States District Court Judge, resigned from his position in Montrose to pursue election to the United States Senate. Inconsistent workloads of referees, relegation to part-time status, limitations on their ability to derive income from other positions and jobs while serving as referees, and the scant salaries derived from the complex and confusing system of fees were likely all factors that contributed to the considerable lack of continuity among bankruptcy referees in the first half of the twentieth century. [12]

In Colorado full-time referees did not come into existence until 1947 when Referee Frank McLaughlin's position was made permanent. Frank McLaughlin came from Independence, Missouri and began his law career in Oklahoma. From Oklahoma he moved to Deadwood, South Dakota in 1890 where he worked as an attorney before arriving in Colorado in 1904. After nearly twenty years of practice in Denver, McLaughlin was appointed in 1923 to serve as referee in bankruptcy. He handled thousands of cases during his tenure, marking the close of his ten-thousandth case in April of 1952. At the time of his death from a series of heart attacks attributed to overworking, it was estimated that McLaughlin had presided over the settlement of one hundred million dollars in property.[13]

B. COLORADO BANKRUPTCY PRACTICE COMES INTO ITS OWN - 1950 to 2000 [14]

Although, in the wake of the Great Depression, the Bankruptcy Act of 1898 saw major revisions by

---

[12] *Id.*

[13] *Frank Mclaughlin, 85, Dies of Heart Attack,* THE DENVER POST, October 9, 1952.

[14] The source of much of the anecdotal information concerning the Colorado Bankruptcy Court and its judges contained in this section is interviews of retired judges and lawyers who were part of practice before this court dating back as far as the late 1950's. The authors have elected not to credit particular tales to specific interviewees, but gratefully acknowledge the following individuals who have shared their experiences with the

the 1938 Chandler Act, in a very real sense the early 1950's mark the start of the modern bankruptcy era in Colorado. In 1953, Benjamin C. Hilliard, Jr. was appointed referee by Chief District Judge William Lee Knous. Hilliard was the first Colorado bankruptcy referee initially to take his office as a full-time bankruptcy referee. Before him Frank McLaughlin had become a full-time referee in 1947, after having served part-time for 27 years. Referee Hilliard sat in Denver, succeeding Frank McLaughlin. At various times during this same period part-time bankruptcy referees sat in five other cities across the state: John P. Helman in Grand Junction (1924-1942); Raymond Sandhouse in Sterling (1924-1942); Sperry S. Packard in Pueblo (1923-1943); J.J. Bradford in Durango (1926-1930); E.D. Peters in Durango (1933-1940); and Charles S. Simon in Colorado Springs (1933- 1939).

Ben Hilliard took the bankruptcy bench at age 56, shortly after an unsuccessful bid to be elected to the Colorado Supreme Court. In his first five years as a referee Hilliard saw the bankruptcy caseload expand from 300 cases in 1953, to 2500 in 1958,[15] reflecting Colorado's disproportionately large number of bankruptcy filings, given its population, a trend that has continued through the twentieth century to the present. In 1958, Colorado with approximately one percent of the country's population, accounted for 2.7 percent of the country's bankruptcy filings. Fifty years later in 2007, with 1.56 percent of the country's population, [16] Colorado had 1.82 percent of the country's bankruptcy filings. In 2015, Colorado had 1.74% of the country's 844,495 filings.[17]

For those who practiced bankruptcy law in the 1950's and early 1960's, Referee Ben Hilliard and the bankruptcy court were synonymous. Though perceived as something of a solemn figure, Referee Hilliard was well regarded by the bankruptcy bar. With the increased activity in bankruptcy court by the late 1950's, a second bankruptcy referee was appointed. J. Gordon Bartly presided in both Denver and Pueblo between 1959 and 1965. As bankruptcy practice expanded, administration of bankruptcy cases was handled by a small, but growing, group of professionals. Most were attorneys. Several had multiple connections to the court, acting as liquidating trustees, attorneys for bankruptcy estates, and appraisers. In some instances these professionals were handsomely compensated for their efforts. At this time there was

---

Colorado Bankruptcy Court: Bradford L. Bolton, Hon. Sidney B. Brooks, Hon. Elizabeth E. Brown, Craig A. Christensen, Carl A. Eklund, Charles W. Ennis, John Guadio, Hon. Glen E. Keller, Jr., Dolores B. Kopel, Gerald H. Kopel, Lee M. Kutner,Hon. Gaspar F. Perricone, Hon. John C. Porfilio (Moore), Paul D. Rubner, Thomas C. Seawell, Harvey Sender, Harry M. Sterling, Kelly J. Sweeney, and Hon. Howard L. Tallman.

[15] Records of the Clerk's Office, United States Bankruptcy Court for the District of Colorado.

[16] U.S. Census Bureau, NATIONAL AND STATE POPULATION ESTIMATES TABLE 1, http:/ /www.census.gov/popest/states/NST-ann-est2004. html.

[17] Administrative Office of the U.S. Courts, ANNUAL BANKRUPTCY FILING TABLE F, http:/ /www.uscourts.gov/stats /dec04/FOOdec04.pdf; Administrative Office of the U.S. Courts, Statistics Reports, Table F, Bankruptcy Filings 2014 and 2015 http:/www.uscourts.gov

little interest by the bar in general or the business bar in particular with bankruptcy practice.

The 1898 Bankruptcy Act provided, and to this day the Bankruptcy Code provides, that in Chapter 7 cases creditors are entitled to elect a trustee to gather and liquidate a debtor's assets as well as to scrutinize a debtor's transactions that occurred in the period prior to the bankruptcy filing. As today, in almost all cases, creditors simply did not exercise this right, and on their default in doing so trustees were appointed by the referees. Colorado's experience was typical. In the 1950's, a small group of trustees handled almost all individual bankruptcies. The trustees were lawyers who in more complex cases hired other trustees to act as their lawyers, a practice that continues to the present.

In the mid-1950's one lawyer, fresh from passing the bar, became the most frequently appointed trustee.[18] He happened to be the son of the bankruptcy court clerk who, in turn, worked in close association with Chief Bankruptcy Referee Ben Hilliard. This fact hit the headlines and editorial page of the Rocky Mountain News in April 1959.[19] The newspaper reported that Herbert W. Delaney, Jr., son of bankruptcy court clerk Herbert W. Delaney, Sr., with 63% of the trustee appointments, made from thirty to fifty thousand dollars per year between 1956 and 1958. Notwithstanding the fact that this news coverage concluded that Colorado's Bankruptcy Court is "well and efficiently run," the publicity about the Court within a week resulted in the appointment by the Colorado Bar Association of a committee of Colorado's leading attorneys to study bankruptcy trustee appointments. The committee was chaired by soon to become Associate U.S. Supreme Court Justice Byron R. White. The suggestion of the *Rocky Mountain News* that "[t]he most obvious answer would be to provide for appointment of trustees on a full-time salary basis,"[20] was never implemented in Colorado or elsewhere. In fact, Colorado's 1950's model of a small panel of private attorney trustees working full or nearly full-time on a fee or commission basis continues in Colorado and across the national bankruptcy system today.

The 1960's saw continued growth and change in Colorado's Bankruptcy Court and bankruptcy practice. In the ten years from 1958 to 1967 the Court's caseload almost doubled, from 2500 cases to 4800 cases.[21] The Bankruptcy Court moved from the old Post Office building (now home of the Tenth Circuit Court of Appeals) one block northeast to the new federal courthouse at 1929 Stout Street, where it shared the first floor with the District Court Clerk's Office.

---

[18] David Stolberg, *Son of Court Clerk Grosses $40,000 Fees,* ROCKY MOUNTAIN NEWS, April 5, 1959, at 6.
[19] *Id*. at 5.
[20] *Id*.
[21] Note 15, *supra*.

In the early 1960's the landmark case of *Katchen v. Landy* was decided at the trial court level by the Colorado Bankruptcy Court. Chief District Court Judge Alfred Arraj upheld the decision and, in turn, was affirmed by the Tenth Circuit in 1964.[22] In 1965, later to be Chief District Court Judge Fred M. Winner argued appellant's position to the U.S. Supreme Court, with George Creamer for respondent. The Supreme Court, in an opinion by Justice White, affirmed the Tenth Circuit's ruling that the Bankruptcy Court had summary jurisdiction of a preference counterclaim, even though it lacked jurisdiction to adjudicate the voidable preference in the absence of the proof of claim filed in the bankruptcy court by the recipient of the preference.[23] Justices Black and Douglas dissented.

In February of 1965, Chief Judge Arraj made an appointment of Referee Bartley's successor on the bankruptcy bench that would have a profound and lasting effect on the court. At age thirty-five, Referee Richard P. Matsch assumed the bankruptcy bench in Denver. When Matsch was appointed, he was mindful of the widely held perception that bankruptcy practice was generally not regarded as highly desirable.[24] After only three months on the bench he addressed the bar, commenting on the importance of this growing area of practice, but expressing reservation about levels of experience and professionalism among much of the bankruptcy bar in Colorado.

This was soon to change. The very force of Referee Matsch's own reverence for the judicial process, his powerful intellect, and the demands he made of himself and of lawyers who appeared before him had a significant influence on raising the level of respect for the bankruptcy court as an institution. Court business was conducted formally, with the Rules of Civil Procedure and Federal Rules of Evidence governing contested matters. Matsch' s insistence on formality and maintenance of distance between himself and attorneys and other officers of the court have been hallmarks of his long career as a jurist. These traits had their roots in his early years on the bankruptcy bench. Notwithstanding the reserve for which he was known, he enjoyed a reputation with the bar as a bankruptcy referee who was scholarly, objective, fair and compassionate.

In early 1968 Referee Matsch again addressed the bar.[25]Ten years before they became effective, Matsch spoke of the importance of reforms of the bankruptcy law and practice that were in the works --reforms that would establish referees as federal judges and further distance those

---

[22] *Katchen v. Landy*, 336 F.2d 535 (10th Cir. 1964).
[23] *Katchen v. Landy*, 382 U.S. 323 (1966).
[24] Richard P. Matsch, *Address at the Bankruptcy Committee Seminar on May 22, 1965,* BANKRUPTCY NEWSLETTER, Vol. IV, No. 1 (Gerald H. Kopel ed., 1965).
[25] Richard P. Matsch, *Chapter XI & X,* BANKRUPTCY NEWSLETTER, Vol. IX, No; 1 (Gerald H. Kopel ed., 1968).

judges from trustees' administration of bankruptcy estates. He spoke of the need for the bankruptcy bar to expand to include lawyers established as leaders in related areas of practice. He expressed pessimism about this coming to pass, as Colorado's bankruptcy practice involved so few cases where dollars involved could draw the attention of such practitioners.

This too was soon to change. In the summer of 1971 an involuntary bankruptcy case was filed in Dallas, Texas against King Resources Company, the oil and gas exploration enterprise built by Denver tycoon John M. King. With over one hundred million dollars in debts, this was at the time the largest Chapter X corporate reorganization ever filed. At the behest of public debt holders, the case was moved to Colorado's Federal District Court where it was handled in significant part by Referee Matsch, acting as special master for the District Court.

Referee Richard Matsch's considerable accomplishments in almost nine years on the Colorado bankruptcy bench were rewarded with his being among the first bankruptcy referees in the country to be elevated, in 1974, to the United States District Court bench, an appointment received almost universally with favor.

As the 1960's drew to a close, the Bankruptcy Court conducted its business in modest quarters in the back of the first floor of the new federal courthouse. While they were courts of record for summary proceedings in bankruptcy, referees were not provided with court reporters, and the record of proceedings often was of poor quality. Primitive recording equipment in the courtrooms sometimes resulted in a transcript replete with pages transcribed only as "inaudible." If any matter was of sufficient magnitude and import that an appeal was likely, counsel was well advised to bring his or her own court reporter to the Bankruptcy Court. Referees' decisions were not reported at this time.[26] Word of cases of interest as well as commentary, court news, and other information of interest to the Colorado bankruptcy bar circulated in a newsletter that was published by Gerald Kopel, a highly regarded practitioner and consumer advocate. Kopel also served from 1964 to 1992 in the Colorado Legislature where, respected by leadership on both sides of the aisle, he was a leading spokesman for consumers as Colorado adopted modern consumer related legislation such as the UCCC and the Colorado Consumer Protection Act.

In response to the Bankruptcy Court's increasing caseload, Robert P. Fullerton had been appointed bankruptcy referee in early 1965. Fullerton had unsuccessfully sought election to the Denver District Court following his service on the county court bench. He served on the bankruptcy bench until 1973, when he

[26] CCH Looseleaf Bankruptcy Service and Collier's Bankruptcy Cases began publishing bankruptcy court decisions in 1979.

was appointed under Colorado's merit appointment system by Governor Vanderhoof to the Denver District Court where he served for nearly twenty-five years.[27]

In early 1967, John F. McGrath was appointed bankruptcy referee as successor to Charles F. Keen. McGrath sat in Denver and in Pueblo where Referee Bartley had presided for years. Over his long service on the bankruptcy bench, McGrath was well known for his sense of fairness and empathy with those who had fallen on hard times. He was also well known for his temper (he referred to it as his "Irish"), which flared with his frustration when matters before him were not made sufficiently clear to him. His angry outbursts were frequently followed by his apologies. Young lawyers sometimes found it difficult to explain to clients when they were suddenly excoriated in open court and minutes later offered best wishes, sometimes on a first name basis, by the same judicial official. More seasoned barristers, once they knew they were about to lose before Judge McGrath, went mining for reversible error by asking for elaboration on the judge's ruling. Those who sensed they were about to prevail charted a fleet exit. Whatever his articulated rationale in a given case, Judge McGrath's strong sense of fairness and caring usually lead to the correct legal result. He was beloved by many during his long service on the bankruptcy bench which came to an end due to ill health shortly before his death in 1987.

Vacancies on the bankruptcy bench created by Judge Fullerton's return to the state court bench and Judge Matsch's elevation to the U.S. District Court were filled by two young, exceptionally able lawyers, Patricia Ann Clark and Glen E. Keller, Jr. Clark had been a business lawyer with Holme Roberts and Owen. Keller had practiced in a small suburban firm, served on the State Board of Health, and participated actively in Republican politics. Both new bankruptcy referees were highly regarded from the start for their superior intellects, and both soon developed a comprehensive knowledge of bankruptcy law.

From early in her judicial career Judge Clark had little patience with lawyers who were incompetent or ill-prepared. She had even less patience for lawyers, their clients, or *pro se* litigants where she perceived a position was being taken that was unsupported by the law, unfair, or worst of all, abusive of the judicial process. She was not shy about letting counsel and litigants know when she thought the merits of their case, equities of their case, or their performance left something to be desired. Her disdain for a party's position might also be reflected in disadvantageous scheduling or the speed with which rulings were rendered or held under advisement. There was never any doubt among lawyers about who was in charge in Judge Clark's courtroom.

---

[27] *Judge Quits to Avoid Discipline Fullerton Steps Down After Moving From City*, ROCKY MOUNTAIN NEWS, Jan. 7, 1998, at A5.

Her control of *pro se* litigants, as with other judges, was sometimes less complete. Early in her tenure on the bench, a *pro se* creditor stood in the rear of her small courtroom at 1929 Stout Street and began to express his agitation about conduct of the debtor. Judge Clark politely instructed him not to interrupt and suggested he would be well served to get an attorney. Moments later the creditor was again on his feet telling his story. Judge Clark abruptly told him to be seated or she would find him in contempt. Before long, up he popped, determined to finish his tale. Judge Clark fined him $100 on the spot to go along with a severe tongue lashing. Immediately after recessing the hearing, Judge Clark returned to the courtroom and courteously explained to the offender the necessity of maintaining order in the court and that he might effectively make his case if he would hire a lawyer. His amiable reply: "Thanks, Judge, but that would cost a lot of money. And now you know that debtor's a crook; and it only cost me $100."

In 2000, Judge Clark completed a 14-year term of appointment by the Tenth Circuit Court of Appeals, which followed twelve years of service before Congress created 14-year terms for bankruptcy judges. This was the second longest term of service of any bankruptcy judge or referee in Colorado, exceeded only by Frank McLaughlin's tenure as first a part-time and then a full-time referee from 1923 to 1952. Judge Clark's impatience with lawyers and litigants may have been exacerbated by health problems in her final years on the bench. This, in turn, was probably a factor in her unsuccessful application to the Tenth Circuit for a renewal 14- year appointment in 2000.

Shortly after Glen Keller joined the Colorado bankruptcy bench, John C. Moore (now Porfilio) was appointed to join referees McGrath and Clark. Moore had been serving as Colorado Attorney General following the death in office of Duke Dunbar. Moore had recently lost a bid, in November of 1974, to be elected to a full term as Colorado Attorney General. Soon after his appointment, Judge Moore had endeared himself to the bankruptcy bar for bringing to the bench a rare combination of humility, grace and self confidence -- the ingredients that make up what trial lawyers call "a good judicial temperament." What Judge Moore did not bring to the bench was much knowledge of the bankruptcy law. Given his other virtues and talents, this was not a problem and soon changed. When presiding over emergency hearings in his first Chapter XI business arrangement case, as five o'clock approached, Judge Moore simply looked over the bench and quietly announced to counsel, "we may have to stay all night, but we will be here as long as it takes you gentlemen to help me get this right." The hearing adjourned well before eight o'clock and Judge Moore got it right. In late 1981, President Reagan nominated Judge Moore to a seat on Colorado's U.S. District Court bench. He was sworn in there in July of 1982. In eight years' time two Colorado bankruptcy judges had been elevated to the Federal District Court, a fact that speaks clearly to the stature the Colorado Bankruptcy Court had by then achieved. In 1985, Judge Porfilio was again elevated by President Reagan to the Tenth Circuit Court of Appeals. He is one of very few bankruptcy judges who has served the federal

judiciary at the level of the Circuit Court of Appeals.

Between the time Judge Moore's name was announced as the selection for the District Court and the time Moore was sworn in as district judge, Judge Keller left the bankruptcy bench for private practice. In his time on the bankruptcy bench, Judge Keller was known beyond Colorado as an exceptionally able jurist. As business bankruptcy cases became regional and even national in scope, Judge Keller became highly regarded by experienced, accomplished bankruptcy counsel, recognized for his competence and case management skills. He was occasionally perceived as hard on counsel whose preparations or competence fell below his expectations of what was acceptable in the Bankruptcy Court. Judge Keller joined the bankruptcy bench with his own aspirations of appointment to an Article III judgeship. Seeing a close colleague achieve that goal may have been instrumental in Judge Keller's seemingly abrupt career change in early 1982.

On leaving the bench Judge Keller joined Davis, Graham & Stubbs, one of Denver's oldest and most respected law firms and that at which Associate Justice White practiced before his career in Washington, D.C. Judge Keller was almost immediately recognized among the premier bankruptcy practitioners in the Rocky Mountain West. He headed what was soon to become one of the regions finest business bankruptcy practices. He received District Court appointments as SIPC liquidator in major cases.· He represented debtors or institutional lenders in most of the largest cases filed in Denver in the l980's and l990's. He mentored several able young lawyers who have become leaders in their own rights among today's Colorado bankruptcy bar. Private practice also gave Glen Keller expanded opportunities to give back to the community. Among other things, he chaired the school board of the state's largest school district. He continued his "other career" as director of the world renowned Westemaires, the non-profit youth precision horsemanship drill team. He gained recognition for his leadership and contribution to the Denver area law firms' highly acclaimed *pro bono* efforts of the Colorado Lawyers Committee.

The King Resources Company Chapter X reorganization case introduced Colorado's business bar to the Bankruptcy Court and perhaps for the first time introduced the Colorado Bankruptcy Court to the nascent national bankruptcy bar, attorneys from Dallas, New York and Chicago. Other substantial business filings followed King Resources. With a downturn in Colorado's economy in 1974, young visionary real estate developer Steven Arnold took the Woodmoor Corporation into Chapter X, where it soon was converted to Chapter XI and ultimately was liquidated over several years in Chapter VII. Three of Woodmoor's four failed land developments have since become the well established suburban communities of Woodmoor and Roxborough Park in Colorado Springs and Denver, respectively, and the growing development of Stagecoach, south of Steamboat Springs.

The late seventies brought the filing of bankruptcy reorganization proceedings by one of Colorado's largest churches, Calvary Temple, and its affiliates the Blair Foundation and Life Center, an elder care facility. Popular evangelist Pastor Charles Blair and his colleagues built a far-reaching Christian ministry funded by debt securities sold to the Christian faithful. The burden of these obligations led, with the help of the Colorado Bankruptcy Court, to the orderly demise of the Charles Blair empire and the rescue of the church for its congregants.

In the late seventies, another case from the Colorado Bankruptcy Court became important U.S. Supreme Court precedent. In *Brown v. Felson* the Bankruptcy Court held that a creditor who had obtained a state court consent judgment on a debt, but had not challenged the debtor's conduct as fraudulent in obtaining the state court judgment, was precluded in bankruptcy court from going beyond the state court record and presenting evidence to establish nondischargeability of the debt on the basis of the debtor's fraud. The District Court and Tenth Circuit Court of Appeals affirmed the decision. The creditor took the appeal to Washington, D.C., represented by Craig A. Christensen of Dawson, Nagel, Sherman & Howard. The debtor was represented before the Supreme Court by Alex Keller. In an unanimous decision by Justice Blackmun, the Court ruled in favor of the judgment creditor, declining to apply the doctrine of *res judicata* in these circumstances. [28]

In 1977, when the District Court needed more space in the 1929 Stout Street U.S. Courthouse, the bankruptcy court was relocated to the Columbine Building at 19th and Sherman Streets, a few blocks northeast of downtown Denver and the other federal courts. That was not met with unbridled enthusiasm by the bankruptcy bench and bar. The Bankruptcy Court spent the next 14 years there, in a rundown vintage 1957 six- story office building, sharing the building with, among others, the newly-formed United States Trustee's Office, the Social Security Administration, and·the Peace Corps. Courtrooms were small and modestly adorned. Chambers suites consisted of offices for two judges with a shared adjoining pool for support staff.

The isolation of the Colorado Bankruptcy Court in the late seventies and 1980's was something of a mixed blessing. From its humble facilities the Bankruptcy Court and bar developed a separate culture, featuring exceptional civility among practitioners and, under the leadership of newly-appointed Clerk Bradford L. Bolton, a sense of common purpose among court staff and the bench in striving to provide quality service to debtors, creditors and the bankruptcy bar. Bankruptcy judges participated regularly in bar sponsored continuing legal education programs and otherwise engaged in

[28] *Brown v. Felsen*, 442 U.S. 127 (1979).

closer communication with the organized bankruptcy bar in an effort to nurture an informed body of bankruptcy practitioners and better to understand their needs as practitioners. These efforts were aided by the newly-appointed U.S. Trustee for Colorado, Delores Kopel, and her first staff attorney. Ms. Kopel had served for many years as a panel trustee prior to the creation of the U.S. Trustee's office by the Bankruptcy Reform Act of 1978. Her first staff attorney, Howard R. Tallman, appointed at age 30, later served a term on Colorado's bankruptcy court bench between 2002 and 2016.

In March of 1982 Roland J. Brumbaugh succeeded Glen E. Keller on the bankruptcy bench. Brumbaugh had been an experienced trial attorney with the Office of the U.S. Attorney for the District of Colorado. He served through the eighties and nineties, retiring in January of 2000, after completing a full fourteen-year term following enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984.

Highly regarded Denver trial lawyer Jay L. Gueck joined R.J. Brumbaugh as a new bankruptcy judge in late 1982. Gueck brought little bankruptcy law background to the post, but with a wealth of trial experience, was soon comfortable with a new discipline. He arrived on the bench just in time to confront the disruptive jurisdictional quandary created by the U.S. Supreme Court's *Marathon* decision. [29] Particularly disenchanted by the Article III bench's resistance to affording Article III status to bankruptcy judges as a response to *Marathon,* Gueck resigned from the bench after only three years. His time on the bench served him well, as he relocated soon after resigning to a very successful, high profile bankruptcy practice in Dallas, Texas.

In the spring of 1986 the vacancy on the Court left by Jay Gueck' s resignation was filled with the judge who perhaps had as great an impact on the Court as any bankruptcy judge since Richard Matsch became a referee twenty years before. To the surprise of the Denver business bar, Charles E. Matheson left his thriving practice at Fairfield & Woods, where he was among its senior partners, to take the bankruptcy bench. At age fifty, Matheson was the first bankruptcy judge to be installed after first having established himself as a seasoned, highly-skilled and respected practitioner and leader among the 17th Street bar. He had been a general business lawyer of the pre-superspecialization era, as comfortable at the conference table structuring a business acquisition as in the courtroom trying a complex commercial case. While not a bankruptcy specialist, he had played an active part in most major business bankruptcies that had taken place in Colorado, beginning with King Resources Company where he represented its principal secured creditor, now extinct Continental Illinois National Bank.

[29] *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.,* 458 U.S. 50 (1982).

In 1987, Matheson was named by the U.S. District Court as Chief Judge of the Bankruptcy Court, where his leadership saw the Court through the busiest time in its history during the prolonged downturn in the regional economy in the late 1980's and early 1990's. As their principal author, Judge Matheson is credited with modernizing the Court's local rules that efficiently guided practice in the Court until major revisions of the Bankruptcy Code in 2005.

Many credit Chief Judge Matheson, like Richard Matsch before him, with elevating the level of practice and professionalism in the Colorado Bankruptcy Court. Judge Matheson' s devotion to the letter of the law, his intellect, his preparedness, and demands he placed upon counsel often brought out the best in practitioners who came before him. Despite a courteous, respectful judicial demeanor, Judge Matheson's quick wit and high standards intimidated some lawyers who practiced before him – the kind of intimidation that motivated able lawyers to perform at their best. Matheson's demands of counsel were not a reflection of arrogance or aloofness, as evidenced by his commitment to helping inexperienced or otherwise challenged attorneys who wanted to improve their skills and knowledge. For years, with no return beyond improving the quality of practice among the bar, Judge Matheson conducted brown bag luncheon continuing education sessions that were open to anyone wise enough to attend.

During the late 1980's the Court, with only four judges, handled more business filings than it had before or has since. This time was the high water mark for Chapter 11 practice in Colorado with several substantial regional and national businesses seeking reorganization, including Storage Technology, Frontier Airlines, Kaiser Steel, and Amdura Corporation. A number of substantial Colorado businesses were also reorganized or liquidated at this time in the Colorado Bankruptcy Court. These included Blinder Robinson Securities, Colorado-Ute Electric Association, Inc., Hans Cantrup and Levine's Discount Furniture.

The caseload challenge to the Bankruptcy Court in Colorado in the late 1980's was complicated by the failing health and ultimate retirement of Judge John F. McGrath in the spring of 1987, after twenty years of service on the bench. For most of a year, a bench of only three judges (Clark, Brumbaugh, and Matheson) handled perhaps the busiest caseload in the Court's history. Judge Sidney B. Brooks, himself an experienced bankruptcy lawyer, was installed as Judge McGrath's replacement in January of 1988. He faced a busy docket from day one on the job, but provided critical relief to his new colleagues.

In early 1990 Donald E. Cordova was appointed to the Court, filling a fifth judgeship on the Court created in response to the continued high volume of business cases and continued increase in consumer filings. Judge Cordova, a past president of the Colorado Hispanic Bar Association and the Denver Bar Association, was a highly-respected, seasoned trial attorney before assuming the bench. His lack of

bankruptcy background proved to be no impediment to his judicial performance. A comprehensive grasp of civil litigation combined with an exemplary judicial temperament caused Judge Cordova to be among the Colorado Bankruptcy Court's most beloved jurists from early in his tenure to his untimely, sudden death from a heart attack in February, 2003.

In response to the volume of filings continuing into the early 1990's, Congress authorized a sixth temporary bankruptcy court judgeship for Colorado. This was not filled until early 1994, when Marcia S. Krieger, who had previously practiced with Judge Brooks, took the bench. By this time the Colorado economy had rebounded and the volume of business filings had subsided. Judge Krieger served ably and in 1999 was named by the District Court to succeed Judge Matheson as Chief Judge of the Bankruptcy Court. In 2002, she became the third member of the Colorado Bankruptcy Court to be elevated to the United States District Court for the District of Colorado.

In 1991 the Bankruptcy Court was rescued from its dingy quarters at the Columbine Building and relocated to 721 19th Street, across from the Circuit and District courthouses. The first and fifth floors of the U.S. Custom House were renovated and the roof partially raised, providing six beautifully adorned courtrooms, comfortable chambers and adequate space for the Clerk's office and growing support staff.

The early 1990's saw the continued filing in Colorado of a number of sizable corporate and individual Chapter 11 cases. MiniScribe Corporation, a publicly-held, Longmont-based early far east manufacturer of down-sized computer discs, sought bankruptcy relief when it was discovered that it had substituted boxes of bricks for warehoused inventory. [30] This Chapter 11 soon was converted to Chapter 7. The demise of MiniScribe spawned massive securities fraud litigation that ultimately resulted in a $134 million settlement with the debtor's accountants and investment bankers. In the scramble for those spoils, the astute negotiating prowess of longtime bankruptcy trustee Tom Connolly resulted in a full recovery by general unsecured creditors and a modest dividend to subordinated bondholders. [31]

The principal owner of the Vail ski resort, George Gillette, filed Chapter 11 as did Oren Benton and his Nuexco Corporation, the world's foremost market-maker in uranium products. Two large Chapter 11 filings, Hedged Investments, and M&L Business Machines, concerned imploding pyramid schemes that bilked hundreds of "private" investors. The former was the CBOE options trading brainchild of James Donahue; the latter was a largely fabricated equipment leasing business concocted by Robert Joseph. Each

---

[30] Andy Zipser, *Miniscribe's Investigators Determine That 'Massive Fraud' Was Perpetrated*, THE WALL STREET JOURNAL, September 12, 1989, at A1.
[31] Christi Harlan, *Coopers & Lybrand Agrees to Payment of $95 Million in the Miniscribe case*, THE WALL STREET JOURNAL, October 30, 1992, at A1.

of these entrepreneurs was prosecuted and finished with his incarceration by the criminal justice system well before the largely unremediated havoc he wreaked on investors was unwound in literally hundreds of adversary proceedings in the Bankruptcy Court.

With the 1990's came a decline in the number of large business bankruptcies filed in Colorado. Much to the chagrin of the local business bankruptcy bar, two significant Colorado businesses sought Chapter 11 relief in neighboring districts. Pueblo's CF&I Steel Corporation filed in Salt Lake City, Utah. Colorado Rockies owner Jerry McMorris's trucking company, Nations Way Transport, Inc., filed for bankruptcy in 1999, in Phoenix, Arizona. Some ascribed the loss of this business to the reputation of the Colorado bankruptcy bench for being unduly sensitive to potential conflicts of interest in affiliate debtor cases as well as being stingy in compensating debtors' professionals. In each of these two cases, it is also possible that management's adverse treatment of a well-organized work force played some part in the use of the Bankruptcy Code's very liberal venue provisions in the selection of a bankruptcy court in a forum remote from the debtor's own backyard. By the late 1990's, a national trend had emerged and persists, that has seen a substantial majority of the country's largest bankruptcy reorganizations being filed in Delaware or the Southern District of New York, familiar forums to the investment bankers who play an ever more dominant role while providing financing for what have come to be called Chapter 11 mega cases.

Between 1994 and 2000, the Colorado Bankruptcy Court was served by the same six judges who shared the load as consumer filings grew from 12,208 to 15,112.[32] With the year 2000 came the end of 14-year terms of two judges, Clark and Brumbaugh, who were sitting in 1986 when active bankruptcy judges were grandfathered to new 14-year terms under the 1984 Bankruptcy Amendments and Federal Judgeship Act. That and other factors caused an abrupt turnover in the bankruptcy bench in Colorado and elsewhere. In less than three years the sixth, temporary judgeship in Colorado, filled in 1994, expired with the retirement of Roland J. Brumbaugh.[33] Two other judges, Patricia Ann Clark and Charles E. Matheson, retired, respectively in 2000 and 2001.[34]Judge Marcia Krieger was elevated to the District Court in early 2002. Chief Judge Donald Cordova died in office in early 2003.

---

[32] Note 15, *supra*.

[33] When Congress creates a "temporary" federal judgeship, no particular judge is appointed to an abbreviated term. Instead, the added temporary position automatically expires, after a stated number of years, upon the retirement from active status of the first to retire of any judge on the bench to which the temporary appointment is made. *See* 28 U.S.C. §152(b)(2) and (3).

[34] Judge Matheson's initial 14-year term ended in the Spring of 2000. The Tenth Circuit in April of 2000 appointed him to a second 14-year term from which he resigned upon reaching retirement age of 65 in December of the same year.

C. COLORADO BANKRUPTCY PRACTICE IN THE 21ST CENTURY

A. Bruce Campbell

Changing of the Guard

The turn of the 21st century brought a number of changes and challenges to the Colorado Bankruptcy Court and Colorado bankruptcy practice. Among those challenges were dealing with four new bankruptcy judges; conversion to a largely paperless court through the nationwide Case Management/Electronic Case Filing System; dealing with the most comprehensive reform to the Bankruptcy Code since 1978, the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act; and adjusting to an unprecedented constriction of funding of the federal judiciary by Congress.

By the year 2000, lawyers practicing before the Colorado Bankruptcy Court had become accustomed to an experienced bench. The six judges sitting at the close of 1999 had eighty-five years of cumulative experience on the bankruptcy bench. Least seasoned among those jurists was Chief Judge Marcia Krieger, with six years experience. Three years later, with Judge Michael Romero's appointment in 2003, to succeed Judge Cordova, the aggregate years of experience of Colorado's bankruptcy bench was just twenty years, with Judge Brooks accounting for all but five of those years. For better or for worse, practice before Colorado's bankruptcy court had, in large measure, become the land of the unknown as bench and bar became acquainted.

The Court's leadership during the years of transition on the bench in the early 2000's might best be characterized as fluid. Between 2002 and 2007, no fewer than four judges served as chief judge of Colorado's Bankruptcy Court. Judge Krieger had been named chief in 1999, as Chief Judge Matheson prepared to retire. Judge Cordova succeeded Chief Judge Krieger when she stepped up to the District Court in early 2002. On Judge Cordova's sudden passing in early 2003, Judge Brooks succeeded him as chief judge. Chief Judge Brooks stepped aside, and Judge Tallman succeeded him in 2007. After leading the court for seven years, Chief Judge Tallman stepped down in 2014, to be succeeded by current Chief Judge Michael Romero.

Chief Judges of Colorado's Bankruptcy Court are selected by the District Court, applying criteria known only to the district judges. The process is somewhat in contrast to naming of chief judges at the District and Circuit Court levels where elements of experience and continuity inform statutory dictates that the most senior judge with at least seven years of "active" status remaining on his or her term serves as

chief.[35] The only criterion apparent for the appointment of bankruptcy court chief judges in Colorado over the past thirty years has ironically been selection of someone other than the most senior sitting judge. Of the last six judges appointed by the District Court as chief judge of the Colorado Bankruptcy Court, only Judge Brooks was the senior sitting bankruptcy judge at the time of his appointment. And, at that time, he had been twice passed over on appointment of less senior of his colleagues.

In spite of the mystery surrounding how Colorado bankruptcy court chief judges are selected, and the resultant potential for bruised egos, Colorado's bankruptcy bench, at least since the turn of the twentieth century, has enjoyed exceptional cooperation and collegiality. Typically, when any judge has needed coverage for a conflict, or for vacation, or help in the event of illness or family emergency, several colleagues have offered assistance, frequently without being asked. By all appearances, bankruptcy judges have looked forward to their weekly luncheon meetings together to address everything from policies and procedures for case administration to staffing, relations with the bar and court staff, caseloads, and continuing education. In addition, the judges regularly have lunched informally in groups of two or three and convened every several weeks for libations and conversation after work in the judges' conference room or a local watering hole.

Welcome – The Digital Age

In 2000 and 2001 the Administrative Office of the United States Courts began implementation of the conversion of the federal courts from a paper-intense to a "paperless," digital filing and record keeping system. This is known as the Case Management/Electronic Case Filing system ("CM/ECF"). The bankruptcy courts – low folks on the proverbial federal judicial totem pole – served as the laboratory and proving ground for this hugely important change. Colorado's bankruptcy court was one of the early courts to test the transition and the largest court to do so at the time.

Historically, when a matter was filed with the court, papers were passed across the counter to a staff in-take person at the clerk's office and date stamped by him or her. The papers were later placed in a case file or jacket(s) maintained for each case in the court, but only after a document number, filing date, and title of the document were manually typed in a table of contents or "docket sheet" maintained in the front of each and every case file. If the court, counsel or anyone else sought access to a document, it was necessary to retrieve the case file, locate the document through the table of contents, and then either work from the case file or reproduce the document. Case files varied from a dozen or so documents in the least complex of consumer cases to thousands of entries consisting of tens of linear feet of files in the most

[35] 28 U.S.C. §§45(a)(1) and 136(a)(1).

prolonged, complex reorganization cases. With tens of thousands of active cases at the turn of the 21st century, a large part of the function of the Colorado Bankruptcy Court Clerk's office was maintaining and housing linear miles of case files.

This is a far cry from today where the Court's entire records could be contained in a shoe box, and millions of documents from hundreds of thousands of cases are available to the court, parties and the public, virtually instantaneously in digital form over the internet. Filing, too, is generally accomplished directly over the internet, without intervention of the court clerk's staff. Marshalling and manipulating information within this now fully-implemented digital system results in huge efficiencies in case management, docket management, reporting and other aspects of business administration of the bankruptcy court and the clerk's office. Such efficiencies have resulted in enormous cost savings to the court, and the debtors, creditors and attorneys which it serves. With roughly the same number of judges and support staff, the court handles many fold the caseload of recent past decades.

The transition from a paper to a paperless court was not without significant challenges. First, the entire clerk's office staff required re-training for operation of a digitized system. From a staff of about 65 in the Colorado Bankruptcy Court Clerk's office, every single position, from the Clerk himself on down, saw significant changes to his or her job description. A digital system simply demanded different skills, with new emphasis on information technology and web-based data entry and management. Most of calendar years 2000 and 2001 were spent preparing clerk's office staff, chambers staff, and judges [36] to receive, maintain, manage, and access in electronic form the thousands of pages that were routinely presented for filing each day. Beginning in early 2002, the first phase of the digital courthouse was implemented – case management or "CM". Every document that was filed in traditional fashion was, in turn, scanned and digitized by court staff, who then did the data entry of each document into the system, thereby allowing the start of case management by computer generated reports. Throughout 2002, court staff undertook an enormous task of training more than a thousand attorneys, who regularly practiced in the bankruptcy court, and/or their staffs, to file documents with the bankruptcy court directly from their offices over the internet.[37] Each person trained was required to attend no fewer than eight hours of instruction and

[36] Preparing judges for a paperless court proved in some cases to be a delicate task – something about 'old stubborn dogs and new tricks.' Much of the training of judges was limited to teaching them how to access on desk top computer monitors millions of documents from tens of thousands of cases. Not all judges were equally comfortable working from computer screens in chambers and on the bench. Some desk top printers got greater use than others. The clerk's office reported that over the first few years of CM/ECF use in the Bankruptcy Court, the five judges copied back to paper format more than 350,000 pages. One particular judicial retro (now retired) was responsible for approximately two-thirds of this assault on our forests.

[37] The federal courts' model for transition to "digital" or "paperless" courts varied dramatically from that of Colorado's state courts. In Colorado state courts electronic filing is done by a central middleman/vendor who

to complete "homework" assignments before being certified to participate in the second phase of the court's digital transformation – electronic case filing or "ECF".

Remote electronic filing over the internet was initiated in early 2003. By this time, much of the court staff's jobs had altogether changed. Gone was handling millions of pieces of paper. Numerous positions focused on "quality control," and a very active "help desk" became critical to the digital transformation. Approximately twenty percent of filers were not asked to train and make the transition to electronic filing. These included *pro se* litigants and lawyers, often from other jurisdictions, who filed fewer than two or three documents each month. As a practical matter, such limited users of the court could not be required, and to this day are not required, to train for filing electronically. Their documents continue to be presented to the clerk's staff, scanned, and digitally entered into the system by the court staff.

In the years after 2003, the Colorado Federal District Court and the Tenth Circuit Court of Appeals, in turn, implemented their own versions of digital case management ("CM") and electronic case filing ("ECF"), following the successful CM/ECF experiment of the bankruptcy courts. The efficiencies and massive cost savings resulting from the transition to paperless courts are an enormous benefit to the public served by the federal court system. The success in meeting huge challenges of this transition is a credit to the flexibility, skills and patience of the clerks and staff of each of these courts.

BAPCPA Comes to the Custom House

Personnel changes and electronic court filing and record keeping were not the only changes that profoundly impacted the bankruptcy court early in the 21st century. The flurry of consumer filings immediately preceding the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act on October 17, 2005, tested the limits of the Colorado Bankruptcy Court. Colorado case filings for the 2004 calendar year were 28,169. Calendar year 2005 filings soared to 43,293. Approximately 15,000 of these occurred in the six weeks before BAPCPA's October 17, 2005 effective date. The total filings for the months of November and December of 2005 were fewer than 500. The entire calendar year 2006, saw only 9,979 filings in Colorado, a level not seen since well before the turn of the century.[38]

The scene at the normally quiet bankruptcy court on the evening of Friday, October 14, 2005, can fairly be characterized as frantic. Consumers, intent on filing on the final business day before BAPCPA

---

receives papers for filings from counsel and, in turn, does the actual filing with various state courts. This model involves the additional time and expense of the intermediary – vendor. However, it avoids the arduous task of training users to file directly from their own desks and quality control issues stemming therefrom.

[38] Note 15, *supra*; U.S.courts.gov, Statistics and Reports; statistical reports for the Federal Judiciary 2004-2006, U.S. Bankruptcy Courts.

would apply to them, formed a cue that extended from the front door of the bankruptcy courthouse literally for blocks. All were accommodated. Processing their paperwork and accompanying filing fees, aggregating hundreds of thousands of dollars, in any ordinary fashion before the stroke of midnight was an obvious impossibility. All available court staff, from the Clerk himself on down, were enlisted in a process of taking papers and money from filers who waited outside the courthouse, sealing these in envelopes, and recording a time of "filing" prior to BAPCPA's effective date. This process created more than a little concern for the court's security detail, particularly when Judge Sidney Brooks, never one to miss an opportunity to assist court staff, joined in on the courthouse steps collecting papers and money and stuffing them in envelopes. At least the good Judge Brooks had the sense to leave his robe in chambers. With many extra hours of work and a herculean effort, the clerk's office in short order managed to sort through, process and file materials from the pre-BAPCPA siege, without complication. All were later rewarded with commemorative coffee mugs, inscribed "We Survived October 2005," undoubtedly a clear violation of some federal regulation.

Bricks and Mortar – and Concrete

The first decade and a half of the twenty-first century saw further adjustments to the facilities in which the Colorado Bankruptcy Court was quartered. The need for some of these adjustments was not always entirely clear. The execution of the adjustments was, on occasion, more than mildly disruptive to the business of the court. The skeptical among court personal, in moments of frustration, posited that when one's landlord is a federal agency, unrestrained by notions of profit and loss, conventional concepts of need may be distorted by available capital appropriations, and notions of the value of long-term relationship building may be preempted by shorter term objectives. In fairness to the General Services Administration ("GSA"), those critical of it, including certain judicial officials, were uninformed as to the mystery of how this agency operates.

The Custom House, a classic early 20th century structure where the bankruptcy court operates on the first and fifth floors, occupies a full city block in central downtown Denver. It is a three-sided building surrounding a large, secure concrete "courtyard," used for parking. In approximately 2006 the GSA set out to drill up and replace about six inches of concrete covering the courtyard's approximate area of a third of an acre. Anticipating the obvious prospect of disruption, the court secured GSA's commitment that work would be done only during non-business hours.

Early in the project, mid-morning while court was in session, work on the courtyard noisily progressed. A call went from Courtroom C to the Clerk of the Court complaining that counsel and witnesses

could not hear one another and that the trial court's record was in jeopardy. Court Clerk Brad Bolton knew what had been agreed to, and he was not to be denied. Within minutes the noise abated, and work came to a sudden halt. On peering out a chambers window to observe the work shutdown, Judge Campbell was greeted with a jesture from a construction worker who was apparently displeased with the work interruption and not entirely consumed with respect for the majesty of the judicial process. His honor was given the finger. The courtyard project continued for many weeks, before and after court hearing hours, to its successful completion. The apparent result: the parking stripes were a brighter shade of yellow, and the concrete surface, a slightly different shade of gray.

Other similar capital improvements to the Custom House were undertaken. The open northeast end of the building contained a concrete ingress/egress ramp, with a three-foot security barrier which raised and lowered on command of a punch code machine accessed form the vehicle driver's window. In snowy and icy conditions, starting on the ramp after stopping to access the barrier code box could be problematic, unless salt or the like was periodically manually spread on the ramp. With some expertise in tearing up concrete, GSA set about a solution to this problem. Another multi-week project, again closing access to Custom House parking, got underway to replace the ramp concrete with concrete containing heatable pipes or coils. At project's end, sand and salt continued to be manually applied to the ramp in icy weather, as the project apparently failed to account for an adequate means to heat the coils within the new concrete.

The GSA is responsive to its duties under the Americans with Disabilities Act. Again calling on its experience in destruction of concrete, GSA replaced the little used wheelchair ramp on the northwest side of the Custom House with a structure that appears oddly identical to that which it removed.

In 2009 or early 2010, GSA was appropriated funds for a comprehensive renovation of the interior of the Custom House. Having learned from the courtyard concrete replacement experience, neither the clerk, the judges, or the GSA was interested in working around courtroom operations while renovating the Custom House. All five judges and chambers staff were relocated to four courtrooms and sharing of the Tax Court courtroom in the fully renovated Byron Rogers Federal Courthouse across the street. That building had been vacated and itself renovated, with the relocation of the Tenth Circuit Court of Appeals and the U.S. District Court, respectively, to the fully renovated Byron R. White Courthouse (1994) and the new Alfred A. Araaj District Courthouse (2002). The Rogers Courthouse provided the bankruptcy judges and chambers staff exceptionally nice temporary facilities. Court clerk's staff was, however, put to significant hardship in continuing to provide first rate support to chambers and courtrooms that were located a block away.

The Clerk's Office

The Colorado bankruptcy bar and bench, alike, have for many years enjoyed the exceptionally competent and professional support of the Bankruptcy Court Clerk and staff. For most of the last four decades leadership in the Clerk's office was provided by Bradford Bolton who served as Bankruptcy Court Clerk from 1979 to 2013. Appointed at the tender age of twenty-seven by the newly-denominated "bankruptcy judges," formerly referees, Bolton was Colorado's first bankruptcy court clerk following the 1978 Bankruptcy Code's separation of funding and administration of the Bankruptcy Court's business from that of the District Court. Under Bolton's leadership the Clerk's office managed with remarkable success the challenges of enormous changes at the court, including huge growth in the volume of business, major changes in judicial personnel, profound changes in technology and skills required of staff, relocation and recurring changes in facilities, and substantial changes in the bankruptcy law itself.

Upon his retirement, Clerk Bolton was asked for the secret to his success as the business executive who oversaw all this change. He responded that, "*It was just a matter of maintaining focus on the Court's purpose and mission – and that has not changed much over the years*." According to Mr. Bolton, once you identify the mission, the job is nurturing a commitment to it – a buy-in from everyone from the judges to the newest staff. When pressed on just how one goes about this, Bolton explained that it's about developing trust – trust among most everyone employed by the Court that the shared agenda is the mission. From there, the more everyone perceives it as in his or her best interest to pursue the mission and to work collaboratively as a team. The result is a more pleasant and effective workplace.

So what is the magic mission? According to Brad Bolton -- to take pride in the effort efficiently to provide the best possible service to the public that the bankruptcy court exists to serve – debtors, creditors, and their lawyers. Some court clerks perceive their primary job as facilitating the work of the court's judges, who, in turn, are there to serve the public. This, said Bolton, underestimates the import of the direct interface between court staff and counsel and counsel's staff, which, in addition to the bar/bench interface, is critical to serving the court's public.

Those that have worked closely with Colorado's longest tenured Bankruptcy Court Clerk maintain that it is not just a lofty mission, built on trust, that accounts for the historical effectiveness of the clerk's office; it is also nuts and bolts executive management skills that Bolton brought to the Court. Judges who worked in the decades of Bolton's court administration point out that he hired highly competent supervisors and freely delegated to them oversight of critical components of the clerk's office, including personnel, finance, and information technology.

As Clerk, Bolton regularly recognized exceptional performance of his staff. He employed fewer people than were employed by similarly situated bankruptcy courts, but he expected more of his staff and paid them better. He was a master at navigating around red tape – a valuable skill for a federal executive. For example, an arcane regulation prohibits the court from bearing the cost when staff gathers for meals. This meant that Bolton and the judges were faced with personally funding quarterly gatherings where the judges met at 6:30 a.m. to prepare breakfast for all hands. Bolton found an equally arcane regulation that created an exception to the "no underwriting meals rule" that allowed the court to pick up the tab for food in connection with ceremonies where awards were made in recognition of outstanding employee performance. After a few sessions where Bolton and five judges were each tapped for a sixth of the cost of sausage and eggs or breakfast burritos, for years now such award ceremonies have been a quarterly happening in the early mornings at the Bankruptcy Court.

As the CEO of a "lesser court" in the federal court hierarchy, Clerk Bolton skillfully chose his battles. When fiscal constraints resulted in a mandate for "shared services," Bolton assumed leadership in streamlining joint efforts with the District Court and Probation Services in such areas as human resources and purchasing, carefully walling off and preserving the independence of the bankruptcy court's information technology support staff, which had by then become so critical to the bankruptcy court with its caseload that, in raw numbers of filings, dwarfed that of the other federal courts.

Flexibility, creativity, and innovation were among Clerk Bolton's talents that were at work at the Bankruptcy Court. With each bankruptcy judge's responsibility for up to 8,000 cases filed annually, an essential function of the Clerk's staff was marshalling the filings to be addressed by each chambers. Drawing on a Japanese business model, the Clerk's office formed, trained, and set to work five, 5-member case administration teams to process for each chambers the massive data required to administer three to eight thousand case filings each year. Each such "CAT" team eventually became self-directed and, for the most part, ably performed its critical function without the benefit of a supervisor.

As a matter of federal court policy, court staff was encouraged to consider "telecommuting," that is, working from home during part of the week. This idea could only work if employees coordinated their efforts so that a physical absence from the court would not impose on fellow employees. In many instances telecommuting has worked well and actually increased efficiency. In the case of one CAT team, the relocation of a valued member's family did not mean the end of her tenure on the clerk's staff. For years she telecommuted from Tulsa, Oklahoma. Two other members of CAT teams successfully continued their employment by the court on relocating to Spokane, Washington and Nashville, Tennessee.

The centrally mandated staffing model for chambers of the bankruptcy courts includes a single law clerk, and a judicial assistant or courtroom deputy. When the caseload of the bankruptcy court increased substantially with the turn of the century, Colorado bankruptcy judges got critical relief as Clerk Bolton designed and implemented a shift of a non-law clerk chambers staff position from chambers staff to court clerk staff, with the vacated position in chambers to be filled with a second law clerk. Perhaps not what the Administrative Office of the U.S. Courts had in mind for staffing bankruptcy courts, this slight of hand rescued some very busy judges from being overwhelmed by their dockets.

With the advent of Clerk Bolton's retirement, the Colorado Bankruptcy Court faced the end of an era and a deep concern with continuity in fulfilling the Court's mission. A nationwide search was undertaken. By far the leading prospect to succeed Clerk Bolton was the then Clerk of Chicago's Bankruptcy Court, a protégé of Bolton and former student of his at Denver University's Masters of Science in Judicial Administration program. This hire was not without its own challenges. Complications arose in Clerk Ken Gardner's transition from Chicago to Denver – multiple postponements of Gardner's start date in Colorado extended more than a year beyond Bolton's departure. And, this came at a time when the federal government faced a shutdown, unanticipated constriction of federal court funding, and something called sequestration. The Colorado Bankruptcy Court, however, weathered the transition of clerks nearly seamlessly – this due to the incredible hard work and skills of the entire clerk's office staff, and particularly that of Clerk Bolton's well trained first lieutenents: Kelly Sweeney, who served the year as Acting Court Clerk; Dennis Powers, who supervised the Court's finances; and Theresa Gardner, who oversaw staff operations.

Bench/Bar Relations

For several decades the Colorado bankruptcy bench and bar have enjoyed what can fairly be characterized as a cooperative and amicable relationship. Practice before the bankruptcy court consistently has reflected appropriate respect for the judicial process and an unusual degree of civility among members of the bar. The bench has sought input from those who practice before it. While the bankruptcy bench/bar relationship has traditionally been a good one, the bench has hardly been unduly solicitous towards the bar. A deep concern for the reputation of the bankruptcy court and integrity of the bankruptcy process is reflected in cases of the federal bench in Colorado, from the Tenth Circuit to the bankruptcy judges. Perhaps rooted in a legacy skeptical about perceived historical cronyism and coziness between the bankruptcy court and bankruptcy fiduciaries (lawyers, trustees and other professionals), these decisions have imposed high standards of transparency and professionalism in bankruptcy practice, particularly

concerning counsel's actual or potential divided loyalties.[39] The decisions have not always been enthusiastically received by the bar.

Over the years in Colorado the organized bar and the bankruptcy bench have partnered in varied joint efforts to improve the quality of practice and professionalism before the Colorado Bankruptcy Court. Leadership from the bar has come from both the bankruptcy subsection of the Colorado Bar Association's Business Law Section and the Faculty of Federal Advocates.

Members of the bankruptcy subsection of the CBA have long participated with Colorado's bankruptcy judges in quarterly brown bag luncheons, hosted at the court. The agenda at such meetings is nothing more than judges and court staff reporting to the bar on current court business and inviting comment from the bar on how the court might better serve it. For years the bankruptcy subsection has regularly sponsored continuing legal education programs which have featured on the faculties bankruptcy judges as well as practitioners. Once or twice a year a member of the bankruptcy subsection and a sitting bankruptcy judge gather with the subsection to deliver an "update" on case law and other developments of current interests to the practicing bankruptcy bar.

In a number of innovative programs, the Faculty of Federal Advocates has worked with the Colorado bankruptcy bench to improve the quality of practice before the bankruptcy court. For fifteen years the FFA has sponsored an annual bankruptcy bench-bar roundtable. Each year, fifty to sixty bankruptcy practitioners gather with Colorado's bankruptcy bench and selected court staff for a one-half day conference. Here, small group discussions take place on topics relating to improving the quality of practice before the judges and improving the court's administration of its business. The conference finishes with assigned "reporters" who present highlights of such discussions followed by adjournment to cocktails.

Counsel to consumer debtors in bankruptcy cases have historically been permitted to unbundle general representation in the consumer case from defense of nondischargeability litigation arising in the consumer's case. This often leaves the consumer debtor, who is typically unable to pay for further legal

---

[39] *See* e.g. *In re Ginco*, 105 BR. 620 (D.Colo. 1988), (law firm for owner of corporate debtor may not represent debtor's bankruptcy trustee in suit against debtor's lender) ("The protection of the integrity of the bankruptcy process is more important than the potential loss of assets of a particular estate." *Id.* at 622; *In re King Resources Company*, 651 F.2d 1349 (10th Cir. 1981) (Allowance of Indenture Trustee's administrative claims for attorneys' fees reversed pursuant to section 249 of the Bankruptcy Act's prohibition of fees to indenture trustees who have sold their separate commercial loan claims against the debtor, notwithstanding a subsequently promulgated bankruptcy rule allowing attorneys' fees in such circumstances. The Court of Appeals held that the rule went beyond its enabling legislation by purportedly overriding a substantive statutory prohibition); *In re Amdura Corp.*, 121 B.R. 862 (Bank. Colo. 1990), (Corporate debtors' counsel disqualified from representing debtors in Chapter 11 cases due to significant prior unrelated representation of debtors' principal secured creditor).

services, without the help of counsel at a critical phase of his or her case. More than a decade ago the Faculty of Federal Advocates put together a *pro bono* program in which, from its membership, a seasoned litigator and an inexperienced trial lawyer team up to represent, on a *pro bono* basis, an indigent consumer debtor in defending a nondischargeability claim. This important service to the bankruptcy court provides very able representation to needy consumer debtors and invaluable experience to aspiring trial lawyers.

Years ago the FFA and the bankruptcy bench joined in an additional educational program covering two days each spring of intensive moot court training for budding trial lawyers. Teams of two young lawyers for each side are given a hypothetical adversary proceedings, complete with stated facts and witnesses through whom the case is to be presented in a bankruptcy courtroom before a sitting judge and an experienced litigator. The case is presented in four parts: opening, direct, cross, and closing. After each part the participating less experienced lawyers are given feedback, criticism, and suggestions from the seasoned FFA member and the bankruptcy judge. While the impact of this program on the overall training of trial lawyers is modest, as a result of this effort approximately twenty lawyers each year are somewhat better prepared when they next actually try a case.

The FFA has provided another service to the bankruptcy court concerning mediation of disputes arising in bankruptcy cases. The FFA arranged independent mediation training of a panel composed of some of its most experienced bankruptcy practitioners. As part of the trial management process, Colorado bankruptcy judges have available to them referral of contested matters to mediation by a member of this panel. In some cases, where litigants are indigent, FFA mediation panel members serve at reduced or without compensation.

Many members of Colorado's bankruptcy bar have participated in an effort to help Colorado bankruptcy judges improve their own performance. Between 2005 and 2012, each of the five then sitting judges voluntarily submitted to a comprehensive, confidential evaluation by the lawyers who practice before him or her. In each case approximately one thousand questionnaires were sent to counsel inviting comment on every aspect of the judge's performance. Responses were anonymous, compiled by staff in the Administrative Office of the U.S. Courts in Washington, D.C., and reported <u>only</u> to the particular judge who was being evaluated. Each such judge was free to do with this information as he or she wished – from disregarding it in whole or in part to trying to adjust his or her conduct as might be appropriate in light of the bar's anonymous feedback. While not a substitute for processes for sanctioning judges in appropriate circumstances, this confidential evaluation is a means of potentially informing the bench, with specificity, of perceived need for improved performance – information rarely otherwise made available to sitting federal judges.

The ongoing cooperative relationship enjoyed by the organized bankruptcy bar and the bankruptcy bench in Colorado guarantees no "resolution" of the many complex challenges that are part of practice before Colorado's bankruptcy court. There can be little doubt, however, that such cooperation has helped create a climate of trust that there are open avenues of communication between the bar and bench and that there is reciprocal appreciation that the bar and bench is striving to improve the quality of processes of the bankruptcy court and practice before it.