

October 1, 2019 -- Looking Back – A new Law, A new Court

The Bankruptcy Reform Act of 1978 took effect on October 1, 1979, forty years ago today. The new law repealed the Bankruptcy Act of 1898 and modernized the law with a new Title 11, the Bankruptcy Code. Although amended several times in the ensuing years, the Code continues to provide relief for debtors and an avenue for recovery by creditors. The basic framework of the Code was set in place by the Commission on Bankruptcy Laws, which had reported the need for a modern bankruptcy law in a two-part report to Congress in 1973.

The Bankruptcy Reform Act of 1978 also made changes to Title 28 and established the United States Bankruptcy Courts as separate courts within the federal judiciary. Prior to this time courts of bankruptcy had always been United States District Courts and, through the years, various judicial officers (Commissioners under the 1800 and 1841 Acts, Registers under the 1867 Act, and Referees under the 1898 Act) assisted the District Judges with the cases. The Referees became Bankruptcy Judges in 1973 by virtue of Bankruptcy Rules adopted by the United States Supreme Court.

J. Bratton Davis served as the first state-wide Referee for the District of South Carolina beginning in 1969 (before that time the District Court had appointed referees on a case by case basis and on a court division or even county basis). Judge Davis developed a keen knowledge of the Bankruptcy Act and was well regarded around the country for his expertise and his sense of how the law might be improved. Several Bankruptcy Judges from around the country, including Ralph Kelly from Tennessee and Joe Lee from Kentucky, had been vocal in urging Congress to adopt bankruptcy reform. Judges Kelly and Lee frequently called upon Judge Davis to travel to Washington to answer questions about the pending legislation, knowing the high regard that Senator Strom Thurmond had for Judge Davis. President Jimmy Carter signed the legislation into law on November 6, 1978.

Imagine Judge Davis faced with both a complete rewriting of the law and the need to establish an independent court on October 1, 1979. There was much to do, including presiding over the pending Act cases. Fortunately, Congress routinely enacted bipartisan budgets in a timely fashion in those days (October 1 also being the beginning of a new federal fiscal year) and Judge Davis was able to bring on board a Clerk of Court, Geoff Levy, and a law clerk, Keenan Stephenson, on day one. Those positions had been authorized by the Reform Act and funded in the FY 1980 budget. They were joined by Brenda Argoe, who had been Judge Davis' able assistant from the District Court, and deputy clerks of court that had performed bankruptcy duties (on at least a part time basis) from the District Court. The early deputy clerks included Janell Hedgepath, later the long-time Chief Deputy Clerk, Kay Luthren, and Pat Smith. Other early hires included Pat Kelly, Anne Hiers, Wendy Hiott Clark, and Parley Crolley, Judge Davis' long time Courtroom Deputy and known to all as PNut. Judge Davis gave him the name Mr. Nut one day when a package arrived for Mr. Crolley and no one knew who that was. Geoff Levy had introduced Crolley as PNut and no one knew his given name or his last name. When told that the

package had arrived for PNut but that no one knew his last name, Judge Davis said everyone deserves a last name and that he would call him Mr. Nut. He did, even from the bench.

For the statistical year ending June 30, 1979 there were 494 Bankruptcy Act cases. Soon the filings grew, with 789 cases in 1980 and 1,639 cases in 1981; reaching a high-water mark of 16,335 cases in 2003. The new Bankruptcy Court joined the District Court and multiple federal agencies at 1100 Laurel Street, though the District Court would move across Assembly Street to the new Strom Thurmond Federal Courthouse in February 1980. As the bankruptcy filings were growing, the federal District Court was growing as well, with Judges Matthew Perry Jr., Falcon Hawkins Jr., Weston Houck, and Ross Anderson Jr. joining the bench of Judges Robert Martin, Jr., Robert Hemphill, Charles Simons, Jr., Donald Russell, Robert Chapman, and Sol Blatt, Jr.

On October 1 Chief District Court Judge Hemphill occupied the Judge's Chambers adjacent to the District Court courtroom (now Judge Waites' chambers) and Judges Chapman and Martin, along with visiting judges, occupied the Judge's Chambers on the other end of the 3rd floor (now Judge Duncan's chambers). Judge Davis and Brenda Argoe occupied offices on the 2nd floor in the vicinity of the 2nd floor courtroom, while the Office of the Clerk of the new court was across the hall from the current Courtroom 204 in the L-shaped room that now serves as an attorney conference room. Keenan joined Judge Hemphill's law clerk and any visiting law clerks from the District Court in the library area of Judge Hemphill's chambers. The District Court Clerk's office was in the space now occupied by 4th Circuit Judge Richardson on the east end of the 2nd floor and the Marshal's office was on the west end of the 2nd floor in what is now visiting bankruptcy judge's chambers.

Judge Davis held court in Columbia in either a shared building conference room or in a small hearing room in the basement. Before the parking lot was enclosed for security reasons, lawyers remember being in the basement hearing room and being distracted by a steady stream of shoes passing by the basement windows. Judge Davis also held court in Greenville and Charleston. He was often moved at the last minute from the courtrooms in Greenville because of a lack of facilities and held hearings in the District Judge's robing room or a conference room. In Charleston, the Bankruptcy Court borrowed space at the District Courthouse but soon had its own space in the old Mendel Rivers Federal Building, later closed due to asbestos.

The Bankruptcy Court was originally scheduled to move with the District Court to the new Strom Thurmond Courthouse, but it quickly became apparent with the new District Judges and the growth in bankruptcy cases projected by the Administrative Office for U. S. Courts that there was no room for the Bankruptcy Court and it remained at 1100 Laurel Street, sharing the building for some time with Probation and Parole and for many years with the U. S. Attorney. In moving, the District Court left behind for the Bankruptcy Court only some employee office furniture and one large file cabinet. There were no copy machines in the building. The first procurement crisis was buying a copy machine to produce notices of filing and the creditors meeting.

The story has often been told that Chief District Judge Hemphill stopped by as the District Court was moving from the building and told Judge Davis to move upstairs to his old

third floor chambers and claim squatters' rights. Judge Davis surveyed his desk and its drawers filled with papers and told Brenda, Keenan and Geoff, "I'll just stay here." When Judge Davis went out to lunch, they removed his desk drawers one by one and carried them and the accumulated papers from his desk upstairs. The next day movers for the Clerk's office came and moved Judge Davis' desk.

Judge Davis was also tasked with appointing trustees for the bankruptcy cases to be filed under the Code. Retired Colonel Thomas Ellzey continued, as under the Act, to serve as the standing chapter 13 trustee and the Administrative Office projected that South Carolina would need a panel of five chapter 7 trustees. Judge Davis accepted applications from former Bankruptcy Act trustees and others interested in the position, and Robert Anderson, Kevin Campbell, Ryan Hovis, Winston Lee and Ralph McCullough were named to the panel. Trustee Ellzey resigned after health issues during the first year and Judge Davis prevailed upon Keenan Stephenson to accept appointment to the standing trustee position and its 200 or so pending cases upon the expiration of his one-year term as law clerk.

The new Bankruptcy Code was a mere 100 pages of the Reform Act and there were no Bankruptcy Rules. The Interim Bankruptcy Rules did not come into effect for 3 years and the first amendments to the Code were still in the future. Judge Davis and his small Bankruptcy Court staff mastered the new law, developed procedures, decided cases, dealt with the bureaucracy and procurement regulations, and laid the foundation for all we enjoy 40 years later. Judge Davis did adopt a series of local rules but noted when the number of rules reached 14 that it seemed too many, the Bible contained only 10.

David R Duncan, Chief Judge

(with thanks to and an acknowledgement of the recollections of Brenda Argoe, Keenan Stephenson, George Cauthen, Geoff Levy, Ryan Hovis, Kevin Campbell and Bob Anderson).