

## IN MEMORIAM – HON. JOE LEE\*

Two quotations sum up Judge Joe Lee. In 1971, ten years into his tenure as a referee in bankruptcy, Judge Lee began one of his many articles with this somewhat startling claim: “[T]here has been little recognition of the fact [that a consumer bankruptcy case] actually constitutes a federal social work program.”<sup>1</sup> Twenty-six years later, on the occasion of his retirement as an active bankruptcy judge, Judge Lee explained to a local newspaper why he did not regret being relatively unknown outside the bankruptcy community: “I’ve never wanted to gain attention by dealing with the misery of others. That doesn’t seem right.”<sup>2</sup>

As much as anyone, Judge Lee understood and empathized with the miseries that drive consumer debtors into bankruptcy. But, as he put it in one of his first publications, he believed that federal bankruptcy courts could “restore dignity to individual debtors.”<sup>3</sup> On that premise, Judge Lee devoted his life to improving the bankruptcy system and strengthening bankruptcy courts.

Judge Lee was born in 1925 in a small town in southeastern Kentucky. He grew up on a little farm. Many years later, if asked why the only meat he ate was turkey, he would explain that turkeys were the only animal he had not slaughtered as a child. In 1943, after graduating from high school, where he played quarterback for the football team, he enlisted in the Air Force and served in England during World War II.

Upon returning from service, he enrolled in the University of Kentucky and earned his undergraduate and law degree by 1955. After his graduation, he clerked for the Chief Justice of the Kentucky Court of Appeals, then the state’s highest court, and for District Judge Hiram Church Ford in the Eastern District of Kentucky. After his clerkships, he served as counsel to the Subcommittee on Labor of the U.S. House of Representatives’ Committee on Education and Labor, where he worked on the Fair Labor Standards Amendment Act of 1961, a comprehensive expansion of federal minimum wage law. He then returned to Kentucky, and on September 1, 1961, the District Court for the Eastern District of Kentucky appointed him as the sole referee in bankruptcy for the district.

Judge Lee had little experience in bankruptcy when he assumed his post as referee, but he quickly became a leader among the referees on matters both intellectual and practical. The 1960s volumes of the *Journal of the National Association of Referees in Bankruptcy* (now the *American Bankruptcy Law Journal*) are filled with his articles, case commentaries, and reports of his speeches at bankruptcy conferences. In these

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<sup>1</sup> Joe Lee, *The Counseling of Debtors in Bankruptcy Proceedings*, 45 AM. BANKR. L.J. 387, 387 (1971).

<sup>2</sup> John Cheves, ‘Debtors’ Judge’ Joe Lee Steps Down After 36 Years, LEX. HERALD-LEADER, Oct. 5, 1997, at B1.

<sup>3</sup> Joe Lee, *Alternative to Bankruptcy*, KY. ST. BAR. J., March 1963, at 14.

years, he was particularly known for his writing on Chapter XIII wage-earner plans, the Chandler Act precursors to the modern Chapter 13 plan.

Judge Lee was also a practical innovator, always searching for ways to enhance the efficiency of the pre-digital bankruptcy courts. In 1964, he participated in an effort to encourage the District Court Judges in his district to adopt a procedure requiring all petitions to include a separate master list of creditors on onion skin paper.<sup>4</sup> Such lists, Judge Lee predicted, “will prove to be a time saving device for the notice clerk in that from the master list the notice clerk can reproduce a set of gum address labels in a matter of seconds.”<sup>5</sup> In 1968, he became the first referee to experiment with computer technology, teaching himself how to write computer programs that could handle notice, trustee disbursements, and closing no-asset cases.<sup>6</sup> In 1971, he instituted a program to provide Chapter XIII debtors with career counseling and crisis therapy from social workers.<sup>7</sup>

Judge Lee’s legislative involvement in bankruptcy began with his role in enacting the 1970 amendment to the Act of 1898 that, for the first time in the nation’s history, gave bankruptcy referees jurisdiction to determine dischargeability. Proud as Judge Lee was of his later role in enacting the 1978 Code, this largely forgotten amendment in the waning years of the Act was Judge Lee’s proudest achievement. Writing of this amendment in 1971, Vern Countryman noted that prior to its enactment, “the relief which the bankrupt got from his discharge was dubious at best.”<sup>8</sup>

Though motivated by the desire to make the fresh start a reality, Judge Lee’s advocacy in this area had a civil-rights component too. In his later years, Judge Lee would often tell the story of his encounter with a state-court judge in a small Kentucky mining town who told Judge Lee he refused to recognize the discharge as a defense for African-American debtors. It was this encounter, Judge Lee said, that prompted him to advocate for the expansion of federal jurisdiction over dischargeability.

Judge Lee’s most famous achievement, however, was his role in enacting what would become the Bankruptcy Reform Act of 1978. By 1973, Judge Lee had become the president of the National Conference of Bankruptcy Judges. Congress had authorized the creation of a presidential commission to study bankruptcy reform, but there were no bankruptcy judges on the commission. After Judge Lee’s overtures to the Commission were rebuffed,<sup>9</sup> the NCBJ decided to take the bold step of submitting its

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<sup>4</sup> *A New Method of Addressing Notices*, 38 J. NAT’L ASS’N REF. BANKR. 35, 35 (1964).

<sup>5</sup> *Id.*

<sup>6</sup> Joe Lee, *Trustee Reports and Supervision – An Introduction to Computerized Control*, 42 J. NAT’L CONF. REF. BANKR. 68 (1968).

<sup>7</sup> Lee, *The Counseling of Debtors in Bankruptcy Proceedings*, *supra* note 1, at 398.

<sup>8</sup> Vern C. Countryman, *The New Dischargeability Law*, 45. AM. BANKR. L.J. 1, 10 (1971).

<sup>9</sup> Geraldine Mund, *Appointed or Anointed: Judges, Congress and the Passage of the Bankruptcy Act of 1978 – Part One: Outside Looking In*, 81 AM. BANKR. L.J. 1, 13 (2007).

own bill to Congress—with Judge Lee as principal drafter.<sup>10</sup> At stake was nothing less than the continued survival of the bankruptcy courts; the Commission bill, submitted to Congress at the same time, proposed to replace the bankruptcy courts with a bankruptcy agency.

Recalling Judge Lee’s involvement years later, the late Judge Hal Bonney wrote “when repeal of the Bankruptcy Act was imminent and a completely new body of law necessary, when the Congress was looking for answers, that on countless late nights and weekends in an office in Lexington, Kentucky, Joe Lee labored to fill the voids.”<sup>11</sup> In 1974, the NCBJ’s “Judges’ Bill” was introduced to Congress.<sup>12</sup> For four years thereafter, Judge Lee flew in and out of Washington, hammering out differences between the Judges’ Bill and the Commission bill, working side by side through the night with congressional staffers half his age on the bill’s final language, and testifying in numerous committee hearings. During this time he continued to serve as his district’s sole bankruptcy judge (geographically comprised of 20,394 square miles and six court locations) and handle one of the nation’s largest bankruptcy caseloads. In the end, Congress passed the Bankruptcy Reform Act of 1978, largely along the lines of the Judges’ Bill.

After the Supreme Court invalidated the Bankruptcy Reform Act’s jurisdictional provisions in *Northern Pipeline*,<sup>13</sup> Judge Lee again jumped into the legislative fray, this time advocating Article III status for bankruptcy judges at the risk of losing his own appointment. When Congress instead enacted the Bankruptcy Amendments and Federal Judgeship Act of 1984 (BAFJA), reorganizing bankruptcy courts as judicially appointed units of the district courts, Judge Lee courageously questioned the constitutionality of his own jurisdiction, writing a fifty-page opinion excoriating Congress for “thumbing their noses” at *Northern Pipeline* and the Constitution.<sup>14</sup> (Of course, Judge Lee’s concerns about the constitutionality of BAFJA would come to partial fruition twenty-five years later in *Stern v. Marshall*.<sup>15</sup>)

Judge Lee’s lifelong advocacy for Article III bankruptcy courts had two motivations. A serious constitutionalist who kept five pocket copies of the Constitution in his desk, he sincerely believed that non-Article III bankruptcy courts were legally problematic. But more importantly, he wanted to spare debtors the costs and bafflements of arcane jurisdictional litigation, which he believed detracted from the effectiveness of the bankruptcy system. Nearly forty years after the Code was enacted,

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<sup>10</sup> Patrick Emery Longan & Michael D. Sabbath, *A Conversation with the Honorable W. Homer Drake, Jr. on September 12, 2012*, 21 J. S. LEGAL HIST. 17, 40 (2013) (“Joe Lee . . . was the principal drafter of the Judge’s Bill”).

<sup>11</sup> Hal J. Bonney, Jr., *A Tribute to the Honorable Joe Lee*, 65 AM. BANKR. L.J. vii, vii (1991).

<sup>12</sup> H.R. 16643, 93rd Cong. (1974); Mund, *supra* note 9, at 19-20.

<sup>13</sup> *Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982).

<sup>14</sup> *L.T. Ruth Coal Co., Inc. v. Big Sandy Coal & Coke Co., Inc. (In re L.T. Ruth Coal Co., Inc.)*, 66 B.R. 753, 773 (Bankr. E.D. Ky. 1986).

<sup>15</sup> 131 S. Ct. 2594 (2011).

Judge Lee still vividly recalled the perplexities of summary and plenary jurisdiction, a distinction which he modestly claimed he could never understand.

After BAFJA was enacted, the Sixth Circuit re-appointed Judge Lee as the Chief (and only) Judge of his district. In later years, Judge Lee wryly commented that he was the Chief but had no Indians. As a judge, Judge Lee was scrupulous and tireless. At the peak of filings in his district, he would conduct hearings that opened at nine in the morning and ran to seven at night. Despite his substantial caseload, Judge Lee spent significant time on every matter, often using his hearings as opportunities to educate young lawyers on aspects of their practice of which Judge Lee was the master. Commenting once on his style, Judge Lee said, “You may say at this point, he’s making a Federal case out of a simple bankruptcy. A quick answer is that it *is* a Federal case.”<sup>16</sup>

As Judge Lee’s time on the bench went on, his distinctions grew. He was the Editor-in-Chief of the American Bankruptcy Law Journal for eight years, and a member of the National Bankruptcy Conference, where he chaired the committee on individual debtors for fifteen years. He authored multiple books and treatises on bankruptcy, including the Bankruptcy Practice Manual and his cherished Consumer Bankruptcy Handbook. And he received numerous awards, including the NCBJ’s Herbert M. Bierce Distinguished Judicial Service Award, induction into his law school’s hall of fame, the American College of Bankruptcy (Class 2) and the first Judge William L. Norton, Jr. Judicial Excellence Award for outstanding service to the insolvency community.

In his later years, Judge Lee was an avowed opponent of the proposed reforms that would eventually become BAPCPA, writing op-eds in the New York Times and even a letter to Oprah Winfrey to suggest she invite then-Harvard Law Professor Elizabeth Warren on her show to discuss the proposals. (Oprah declined.) But Judge Lee was unable to repeat his past legislative successes, and when BAPCPA was enacted he faithfully applied the law, as he always had.

Judge Lee retired as an active judge in 1997, but continued to serve on recall until his death. His last two opinions, one on discharge revocation<sup>17</sup> and the other on complex jurisdictional issues of first impression,<sup>18</sup> were both published last year in the Bankruptcy Reporter. In his tribute to Judge Lee on the occasion of his retirement as editor of the American Bankruptcy Law Journal, Judge Bonney wrote: “Without exception, every judge in the land, every lawyer, every debtor, every creditor and every party in interest has directly benefited from the long shadow Joe Lee has cast upon us

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<sup>16</sup> Joe Lee, *Reports and Supervision of Trustees in No Asset and Nominal Asset Cases*, in PROCEEDINGS OF FOURTH SEMINAR FOR REFEREES IN BANKRUPTCY 111, 122 (1967) (emphasis added).

<sup>17</sup> *Crocker v. Stiff (In re Stiff)*, 512 B.R. 893 (Bankr. E.D. Ky. 2014).

<sup>18</sup> *Spradlin v. Williams (In re Alma Energy, LLC)*, 521 B.R. 1 (Bankr. E.D. Ky. 2014), *aff’d*, No. 14-173-ART, slip op. (E.D. Ky. May 28, 2015).

all. He will not be replaced in any of his many capacities by a single person.”<sup>19</sup> These words have particular poignancy for those who worked with him.

He is missed.

\*Message from Chief Judge Tracey N. Wise, Eastern District of Kentucky:

Judge Lee passed away on May 21, 2015, leaving his beloved wife Carole, four daughters and many other loving family members. He also leaves an unprecedented legacy as a federal bankruptcy judge, activist, author, teacher and gentleman. The Eastern District of Kentucky had only one referee/bankruptcy judge during the period 1961-1990, Judge Joe Lee. To say our court has lost a legend is a gross understatement. Judge Lee positively impacted innumerable people – the public, the bar, and his colleagues-- in countless ways. We are grateful to our law clerk, Asher Steinberg, for his thoughtful work in compiling this Memoriam, and to our Clerk of Court, Jerry D. Truitt, for the benefit of his recollections of Judge Lee.

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<sup>19</sup> Bonney, *supra* note 11, at viii.