

25 YEARS OF BANKRUPTCY BENCH MEETS BAR

Presented by the Boston Bar Association



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ACKNOWLEDGMENTS

Thank you to the Boston Bar Association's Bankruptcy Section for putting together this history, and putting on 25 years of Bankruptcy Bench Meets Bar. A special thank you to everyone who submitted materials, the courts, and everyone who has attended this program throughout the years.



Bankruptcy Bar Meets Bench Commemorative Book Committee

*From left to right - Liz Vincensi, Nina Parker, Jeff Sternklar,
Hon. Joan Feeney, Natalie Sanyer, Guy Moss, John Loughnane*

Not pictured: Tom Raftery, Adam Ruttenberg, Chris Candon, Leslie Su

A PRELIMINARY NOTE

This work does not purport to be a complete history of the Bankruptcy Section nor the many people who have contributed to the practice in the District over the years. The limits of time and volunteer resources would have rendered such a project impracticable. Rather this work strives to offer a glimpse at the past, to spark others to share experiences and, most importantly, to help inspire current and future practitioners to commit themselves to the highest ideals of the profession. The Bankruptcy Section intends to nominate an individual to serve in the role of historian on the Steering Committee. The designated Historian will continue working with a committee to facilitate efforts by the bar and bench to tell the story that this work begins to tell -- perhaps using a digital format to do so. The Section encourages anybody with a story or materials to come forward and help continue building the history beyond this work. Readers are also encouraged to review the online site of The National Bankruptcy Archives, a national repository of materials relating to the history of debtor-creditor relations, bankruptcy and the reorganization of debt. The National Bankruptcy Archives began in 2002 through the collaboration of the Biddle Law Library at the University of Pennsylvania, the American College of Bankruptcy, and the National Conference of Bankruptcy Judges. See <https://www.law.upenn.edu/library/archives/bankruptcy/>



25 YEARS OF BANKRUPTCY BENCH MEETS BAR

An Introduction

The Boston Bar Association traces its origins to meetings convened by John Adams in 1761, distinguishing it as the oldest bar association in the United States. The BBA works to advance the highest standards of excellence for the legal profession, to facilitate access to justice, and to serve the community at large.

The Bankruptcy Section of the BBA has embraced that noble mission with unabashed pride and commitment. The Annual Bench/Bar Event, which started when the Section was simply a committee of the Business Section and has been held each Spring for the past 25 years, has been an instrumental driver of the Section's success in fulfilling the BBA mission.

With great pleasure, we invite you to peruse the following pages and experience some of the history of the Section and the Bench/Bar event over the past quarter of a century. Like the event itself, this book exists only because of a special collaboration between the Bankruptcy Section and the judges of the United States Bankruptcy Court for the District of Massachusetts. There would be no annual program without the Court's commitment and support. Similarly, this book never would have materialized without the contributions of the Court, the dedication of many Section volunteers, and the critical assistance of the BBA.

We hope this work brings back fond memories of the many people who have dedicated themselves to the BBA's mission over the years. We hope too that this work serves as an inspiration to younger and newer members of the legal community. Excellence in the legal profession remains a critical goal as does facilitating access to justice and serving the community at large. Participation in the Bankruptcy Section of the BBA allows a lawyer many opportunities to pursue these goals, and in so doing, continue the long tradition of the BBA.

Enjoy!

John Loughnane & Adam Ruttenberg
Bankruptcy Section Co-Chairs, 2014-2015

A TIMELINE OF BANKRUPTCY BENCH MEETS BAR

1991

- Inaugural Bankruptcy Bench Meets Bar
- Appointment of Franklin Childress as United States Trustee, Region 1
- Appointment of the Honorable William C. Hillman to the U.S. Bankruptcy Court (D. Mass.)
- In re Bank of New England Corp. filed, Case No. 91-10126

1992

- Appointment of the Honorable Joan N. Feeney to the U.S. Bankruptcy Court (D. Mass.)
- In re Cumberland Farms filed, Case. No. 92-41305
- In re Wang Industries, Inc. filed, Case No. 92-18525

1993

- Appointment of the Honorable Henry J. Boroff to the U.S. Bankruptcy Court (D. Mass.)

1994

- Enactment of Bankruptcy Reform Act of 1994 (Public Law 103-394)
- In re Thinking Machines Corp. filed, Case No. 94-15405
- Appointment of the Hon. Carol J. Kenner as Chief Judge of the U.S. Bankruptcy Court (D. Mass.)
- Appointment of James Lynch as United States Trustee, Region 1
- Appointment of Judith Crossen as Chief Deputy Clerk of the Bankruptcy Court (D. Mass.)

1995

- Appointment of Joel Pelofsky as United States Trustee, Region 1
- In re Francis Michael Latanowich filed, Case No. 95-18280
- Appointment of James M. Lynch as Clerk of the Bankruptcy Court (D. Mass.)

1996

- First Circuit Reestablishes Bankruptcy Appellate Panel
- Appointment of the Hon. Arthur N. Votolato as Chief Judge of the Bankruptcy Appellate Panel
- Appointment of Marcia Martin as Clerk of the Bankruptcy Appellate Panel
- In re American Bridge Products, Inc. filed, Case No. 96-16620 First Circuit

1997

- In re Molten Metal Technologies, Inc. filed, Case No. 97-21385

1998

- Appointment of the Hon. William C. Hillman as Chief Judge of the U.S. Bankruptcy Court (D. Mass.)
- Appointment of Barbara Beatty as Clerk of the Bankruptcy Appellate Panel for the First Circuit

1999

- In re Boston Regional Medical Center, Inc. filed, Case No. 99-10860
- In re FBC Distribution Corp. (f.k.a. Filene's Basement Corp.) filed, Case No. 99-16985

2000

- Appointment of the Honorable Joel B. Rosenthal to the U.S. Bankruptcy Court (D. Mass.)

2001

- In re Malden Mills Industries, Inc. filed, Case No. 01-47214
- Appointment of Phoebe Morse as Clerk of the Bankruptcy Appellate Panel for the First Circuit

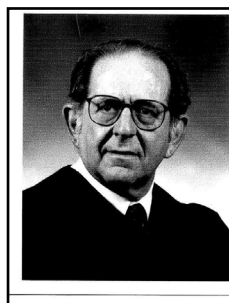
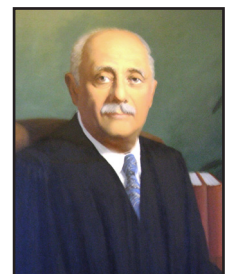
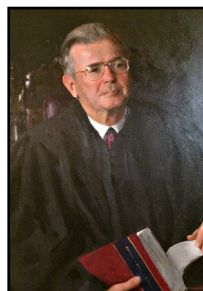
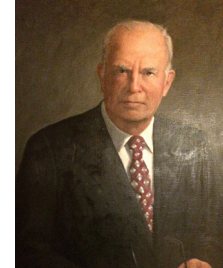
2002

- In re Arthur D. Little, Inc. filed, Case No. 02-41045
- Appointment of the Honorable Joan N. Feeney as Chief Judge of the U.S. Bankruptcy Court (D. Mass.)

1990

1995

2000



2003

- Local Rules Committee formed
- Appointment of the Honorable Carol J. Kenner as Chief Judge of the Bankruptcy Appellate Panel of the First Circuit

2004

- Financial Literacy Program established by the United States Bankruptcy Court for the District of Massachusetts and Boston Bar Association; In 2007 the program is renamed the M. Ellen Carpenter Financial Literacy Program
- Appointment of the Honorable Robert Somma to the U.S. Bankruptcy Court (D. Mass.)
- In re The Ground Round, Inc. filed, Case No. 04-11235
- Appointment of the Honorable Enrique Lamoutte as Chief Judge of the Bankruptcy Appellate Panel of the First Circuit
- Bankruptcy Appellate Panel Clerk's Office consolidated with the First Circuit Court of Appeals and Richard Donovan appointed as clerk of both courts

2005

- Enactment of Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law 109-8)
- Judge Joan Feeney is awarded the BBA Haskell Cohn Distinguished Judicial Service Award

2006

- Appointment of the Honorable Henry J. Boroff as Chief Judge of the Bankruptcy Court (D. Mass.)
- In re Sima Schwartz filed, Case No. 06-42476

2007

- In re Tradex Swiss AG filed, Case No. 07-17518

2008

- Bankruptcy Appellate Panel Clerk's Office deconsolidated from Court of Appeals of the First Circuit
- Appointment of Mary (Molly) Sharon as Clerk of the Bankruptcy Appellate Panel of the First Circuit
- Appointment of the Honorable James B. Haines as Chief Judge of the Bankruptcy Appellate Panel of the First Circuit

2009

- Appointment of the Honorable Frank J. Bailey to the U.S. Bankruptcy Court (D. Mass.)

2010

- Appointment of the Honorable Melvin S. Hoffman to the U.S. Bankruptcy Court (D. Mass.)
- Bankruptcy Court Diversity Initiative Task Force formed
- Appointment of the Honorable Frank J. Bailey as Chief Judge of the Bankruptcy Court (D. Mass.)
- Appointment of John Fitzgerald as Acting United States Trustee, Region 1
- Appointment of William Harrington as United States Trustee, Region 1

2011

- U.S. Supreme Court issues Stern v. Marshall decision
- In re Quincy Medical Center filed, Case No. 11-16394

2012

- Massachusetts homestead law overhaul amendments enacted following BBA leadership effort
- Pro Bono Legal Services Advisory Committee formed
- Appointment of the Honorable William C. Hillman as Chief Judge of the Bankruptcy Appellate Panel of the First Circuit

2014

- U.S. Supreme Court issues Executive Benefits Insurance Agency v. Arkison decision
- In re Telexfree, LLC filed, Case No. 14-40987
- U.S. Supreme Court grants certiorari in Wellness International Network Ltd et al. v. Sharif

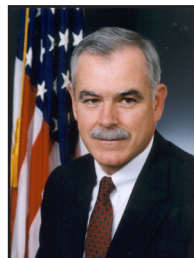
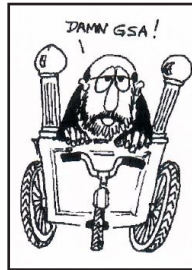
2015

- 25th Annual Bench Meets Bar

2005

2010

2015



SECTION CHAIRS THROUGH THE YEARS

REFLECTIONS OF BOSTON BAR ASSOCIATION BANKRUPTCY SECTION CHAIRS THROUGH THE YEARS

Commencing in 2011, contributions and reflections were sought and compiled from each of the Bankruptcy Law Committee and Bankruptcy Section Co-Chairs so that future members of the BBA Bankruptcy Section would have a centralized and institutional record of the group's efforts and goals as well as who the leaders were during various periods in bankruptcy history, who won awards, and who spoke at the Bench Bar programs. The idea of such a compilation was to ensure that there was a record of the memories, stories and recollections of the Bankruptcy Committee and the Section Co-chairs that would otherwise dim with age or be forever lost. The following are excerpts from reflections and reminiscences from each of the co-chairs who have served in that leadership capacity to date. Due to space considerations, only an excerpt from each contributor could be included; however, the full narratives are available and are treasures which should be read. The Section's work on this book has led to the discovery that the history of the Section is worth preserving. In order to insure that this happens, the Section intends to nominate a member to serve as the historian for the Steering Committee to keep a record of the accomplishments and activities as well as awards and photographs with the intent that the items will become available digitally in the future for all to enjoy.

The selections contained below begin with the original Bankruptcy Law Committee Chair and continue through the restructuring as a separate Bankruptcy Section with selections through the 2014 Co-Chair. It is interesting and enlightening to read about the past as we plan for the future and the next twenty-five years.

Thank you to all who participated by contributing your time, your thoughts, your humor and your extraordinary commitment to the Bankruptcy Bar.

Nina M. Parker

Historian: Finding and Keeping our PLACE

Order of Reflections

Daniel M. Glosband
Judge Henry J. Boroff
Mark N. Berman
Janet E. Bostwick
Judge Joel B. Rosenthal
Christopher J. Panos
William W. Kannel
Joseph H. Baldiga
Thomas O. Bean
William J. Hanlon

Anne J. White
Christopher Mirick
Lynne F. Riley
Douglas B. Rosner
Donald R. Lassman
Adrienne K. Walker
Nina M. Parker
Douglas A. Gooding
John T. Morrier
Jeanne Darcey





Daniel M. Glosband, Chair of the Bankruptcy Law Committee 1977 – 1984

The time frame spanned the last days of the Bankruptcy Act in 1978 and the first of the Bankruptcy Code in 1979 and I am certain that we had programs on the changes. By then, the “Referees in Bankruptcy” had been denominated as Bankruptcy Judges through the adoption of Bankruptcy Rules. I believe that the Judges were Lawless, Lavien and Glennon and all sat in Boston with perhaps an occasional field trip. The courthouse was in Post Office Square, where it has recently returned. Then it was the actual Post Office and Federal Court. There had been no courthouse security until the latter part of the 1970s and lawyers could take the “back elevators” directly to the judge’s chambers. Papers were filed in hard copy and there would be dashes to the clerk’s office to meet deadlines. Security was only imposed after District Judge Garrity took on the Boston school bussing case and was threatened.



In Memoriam

Peter A. Fine, Chair of the Bankruptcy Law Committee 1984-1987



Judge Henry J. Boroff, Chair of the Bankruptcy Law Committee 1987-1990



My first memories of what was then the “Bankruptcy Committee” of the Business Section of the BBA was attending its monthly lunches in the early 1980’s. Dan Glosband was the chair. I very much looked forward to those lunches and learned a great deal of bankruptcy law from those who gave presentations... One day, I received a telephone call from the then President of the BBA. He asked whether I would be interested in creating a bench-bar program in bankruptcy. I responded that - while I had extensive experience with running continuing legal education programs (having done so for years with MCLE, the BBA, the MBA and CLLA) - it was extremely unlikely that our judges would participate in a bench-bar program in light of what was then thought to be a “difficult” relationship between the judges in Boston. The BBA President called back the next day to tell me that he had (in my view, miraculously) gotten each of the judges to agree to participate. Over the next few years, the program continued as an educational program followed by a sit-down dinner with a speaker (including then First Circuit Chief Judge Stephen Breyer, later First Circuit Chief Judge Juan Torruella, and the chief of the Boston office of the Federal Reserve). Although the form of the bench-bar program has changed slightly over the years, its quality has consistently improved on account of the dedication of its following chairs, participating lawyers and bankruptcy judges.



Mark N. Berman, Chair of the Bankruptcy Law Committee 1990 -1992

The first Bench/Bar program took place during my tenure as Chair. Its origins came out of the first BBA Law Day celebration to which the bankruptcy judges were not invited. Jack Driscoll was the BBA President at the time and he called me on October 12, 1990 to say that he had approached Bankruptcy Judge Gabriel about honoring the bankruptcy judges as a way of mitigating the snub about the BBA Law Day celebration. Jack led the way in setting up a meeting with me and Hertz Henkoff and we came up with the concept of the Bench/Bar program to be held on May 7, 1991. We wanted an educational program followed by a dinner at which we would have a speaker of some notoriety and which was intended as a dinner to honor our bankruptcy bench. Bankruptcy Judges Queenan and Gabriel were also consulted. Ron Wainrib was the BBA contact. Ed McHugh from Nutter, Henry Boroff, Tom Miller, Victor Bass, Howard Gorney and Rick Mikels “volunteered” to help with the planning. Judge Conrad K. Cyr, then sitting on the First Circuit US Court of Appeals, was the first honoree and spoke at the dinner in May. Howard was the moderator of the afternoon educational program and Henry Boroff was the Chairman of the Reception and Dinner program.... [My hope for] the future of the Bankruptcy Section is that it continue to foster a spirit of collegiality, excellence and compassion amongst the members of Boston’s bankruptcy community.





Janet E. Bostwick, Chair of the BBA Bankruptcy Law Committee 1992-1994

The major event during my tenure in 1994 was the first (unfortunately of several) consumer bankruptcy attorney disbarment. The attorney was a well known consumer attorney with a substantial practice, who was disbarred by the Supreme Judicial Court. The Bankruptcy Judges were concerned with the impact on the existing cases, particularly where clients had already paid the fees. There were more than 100 active cases this attorney was involved in, as well as a listing of more than 400 open cases. While the Board of Bar Overseers would appoint someone to transition the files, they did not have a mechanism to provide pro bono services. The Clients' Security Board process took a minimum of 60 days (and more likely 90 days or more) to reimburse clients for fees, timing which did not work in rapidly moving bankruptcy cases....We sent a letter to all members of the BBA Bankruptcy Committee, and the MBA and WBA solicited their members as well, asking for pro bono assistance. The response was overwhelming... [and] we enlisted enough volunteers to take all cases where clients sought assistance.



Judge Joel B. Rosenthal, Chair of the BBA Bankruptcy Law Committee 1994-1996



My early exposure to the Bankruptcy Committee of the BBA was at the monthly brown bag lunches held in the bowels of 16 Beacon Street. I recall the excellent chocolate chip cookies and how impressed I was that the then senior members of the bar were willing to share their expertise and insight unselfishly with us youngsters. Remember, few organizations were doing Bankruptcy CLE at the time and the American Bankruptcy Institute did not exist!

As years passed, Janet Bostwick twisted my arm and asked me to accept the chairmanship (there were no co-chairs or a steering committee then). I remember being concerned about where I could recruit enough speakers for so many luncheons and then being awed by how many volunteered and how many worthy speakers I had to say “no” to.

Part of the Chair’s responsibility was to find a dinner speaker for what was then a Bench Bar Program and Dinner at the Parker House. I approached Judge Juan Torruella, the incoming Chief Judge of the First Circuit Court of Appeals. He protested, saying he was not a good speaker - I replied that he was being too modest and we really wanted him and that he could speak on anything he wanted. He chose NAFTA to speak on. The audience, including his own wife, was underwhelmed. That was the last dinner we ever had! Years later when he was welcoming me to his Chambers at the Fan Pier Courthouse for my final interview before I was selected as a Bankruptcy Judge, he remembered the incident and reminded me.

Looking back on those years, my proudest accomplishment was in selecting as my successor a young practitioner who had recently left the U.S. Attorney’s office. The late beloved Ellen R. Carpenter protested vigorously when I pressed her to take the chair as her first official role at the BBA. The rest is history - her Presidency of the BBA several years later was extremely successful, and I take some pride in having helped her along the way.

Reflecting back, it has been an honor and privilege to be associated with the Bankruptcy Committee and later the Bankruptcy Section of the BBA.



In Memoriam

M. Ellen Carpenter, Chair of the BBA Bankruptcy Law Committee 1996-1998



Christopher J. Panos, Chair of the BBA Bankruptcy Law Committee 1998-2000



At the beginning in 1998, Ellen Carpenter and Frank Moran, then Executive Director of the BBA, sat with me and told me that the BBA Council would likely approve a proposal to make the very active and successful Bankruptcy Law Committee of the Business Section a stand-alone Section of the BBA. Ellen was chair of the Committee, and I was Vice Chair. Frank and Ellen asked me to be the first section Chair. In her inimitable style, Ellen told me, “This Committee has been a great success; don’t screw it up.” This is the same advice that had been passed from Committee Chair to successive Chair for many years, as each improved the programming, visibility and membership of the Committee.



William W. Kannel, Chair of the BBA Bankruptcy Section 1999-2001

In looking back through the steering committee agendas and bankruptcy newsletters from that period, it seems clear that during that time we had started to establish the identity and form the various standing committees within the bankruptcy section. According to an agenda from the winter of 2001, the committees were the newsletter and information services (which I think I still chaired), practice and procedure (chaired by Bill Hanlon), consumer law (chaired by Emily Greer), membership (chaired by Chad Dale), young lawyers (chaired by Chris Devine and Ross Martin) and public policy and legislative affairs (chaired by Tom Bean). Our focus at that time on the legislative front was improving the GOB statute and working on the homestead law (which as you know took quite awhile to come to fruition). We also dealt with the beginnings of the reaffirmation project and started to work through the issues associated with a general standing conflict waiver from some of the bigger financial institutions. We also focused on a number of cross section initiatives, most notably a CLE program with the health care section, which I helped to organize, and a CLE program with the intellectual property section (which Tom Bean organized).

Joseph H. Baldiga, Chair of the BBA Bankruptcy Section 2000-2002

I remember this period as being one where the Bankruptcy Committee was really exploring how best to enhance its pro bono efforts and programs. Reaffirmation and pro se representation were hot topics, I believe that Judge Kenner had recently issued her Sears reaffirmation decision, and the Bankruptcy Judges in our district were grappling with the problem of appearances by many pro se consumer debtors, in relation in particular to questionable reaffirmation agreements. After many discussions we collectively came up with the reaffirmation clinics, which were then successfully implemented, and have now spread throughout the District. It has been gratifying to witness the Section's development of additional pro bono programs and the growth in the number of attorneys involved in the Section's pro bono efforts.



Thomas O. Bean, Chair of the BBA Bankruptcy Section 2001-2003

Perhaps my strongest memories of the two years occurred at the Bench-Bar Conference in 2003. First, we recognized M. Ellen Carpenter, a former section co-chair, who was ascending to the Presidency of the BBA. Ellen was the first bankruptcy practitioner to become President. Second, the section presented Richard Hackel, who had been diagnosed with ALS, with its Lifetime Achievement Award. It gave me great pleasure to see Richie amble up the stairs to the podium at the Bench-Bar, with his family in the audience, and speak about what the award and the section had meant to him. Of course, he was wearing his trademark red socks under his suit, socks he proudly displayed to the audience.





William J. Hanlon, Chair of the BBA Bankruptcy Section 2002 - 2004

Tom Bean, the outgoing co-chair, handed me the co-chair magic decoder ring and the following sage words of advice: “Don’t screw it up.” I selected Anne White to co-chair and help me not to screw it up.... At the end of a full year, Chief Justice Margaret H. Marshall of the Massachusetts Supreme Judicial Court presents the John and John Quincy Adams Pro Bono Publico Awards to the Bankruptcy Law Section of the Boston Bar Association in recognition of distinguished service and outstanding commitment in providing volunteer legal services for poor and disadvantaged citizens in Massachusetts.



Anne J. White, Chair of the BBA Bankruptcy Section 2003 – 2005



With the enactment of Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”) on April 20, 2005, the BBA Bankruptcy Law Section led our legal community’s efforts to analyze, comprehend and communicate the important and far-reaching changes imposed by the new law. Donald R. Lassman and Mitchel Appelbaum agreed to co-chair a special subcommittee which worked to produce four separate programs in June, 2005, another four in July and August, 2005, and two four-hour CLE seminars in September, 2005. Prior to BAPCPA, on October 7, 2004, the entire bankruptcy legal community including, among others, Judges Feeney, Boroff and Rosenthal and United States District Court Judge Patti B. Saris, the then BBA President M. Ellen Carpenter, and over one hundred bankruptcy practitioners gathered at the BBA to honor Judge Carol J. Kenner for her 18 years of distinguished service as a member of the judiciary. Shortly after BAPCPA, on June 28, 2005, the Boston Bar Association honored Chief Judge Joan N. Feeney with the coveted Haskell Cohn Distinguished Judicial Service Award. BBA President M. Ellen Carpenter presented the award to Chief Judge Feeney in a packed ceremony at the BBA where she lauded the Chief Judge’s commitment and contribution in a myriad of areas including continuing legal education, child financial literacy, pro bono debtor assistance and women and minorities in the law. Chief Judge Feeney accepted the award with gracious homage to her law clerks, court staff, the BBA, the practicing bankruptcy bar and her fellow members of the Bench.

Christopher Mirick, Chair of the BBA Bankruptcy Section 2004-2006

The Section's historical and continuing commitment to pro bono and educational efforts is admirable and inspiring. Although my practice is now based in New York City, I continue to be involved with the Section because of the on-going good it does in our legal community and our society as a whole. From the pro-se reaffirmation clinic to the financial literacy program to the large firm pro bono projects, the Boston Bar Association's Bankruptcy Law Section is a leader in its field. It was an honor to serve as Section co-chair, and I'm thrilled to see the work being carried on by the leaders and members today.



Lynne F. Riley, Chair of the BBA Bankruptcy Section 2005-2007

In December 2006, our section experienced the loss of Ellen Carpenter. The Bankruptcy Court and the BBA acted quickly to re-name its joint financial literacy program in Ellen's honor, and in January 2007, the program became the M. Ellen Carpenter Financial Literacy Program. During her year as BBA president, Ellen formed the financial literacy task force as one of her presidential goals; and the task force completed its report and implemented the pilot program within Ellen's presidency year. Ellen continued to be a strong supporter of the program, participating in classroom as well as attending all of the courtroom "Consequences" sessions. That year at the Bench Meets Bar Conference at the Colonnade Hotel in Boston, Ellen was awarded the Normandin Lifetime Achievement Award - considered the highest honor bestowed by our Bankruptcy Section. Ellen's sister accepted the award on Ellen's behalf. We also presented a slide show with many pictures depicting the exceptional and endless talents, contributions, and achievements portrayed in Ellen's 27 years as a bankruptcy lawyer, esteemed colleague, and dear friend.



Douglas B. Rosner, Chair of the BBA Bankruptcy Section 2006-2008

The Section helped the Court modify its website to steer pro se debtors to organizations that could help provide counsel. We created a split representation program to attract large firm lawyers to represent pro bono debtors in adversary proceedings and contested matters. It also allowed attorneys in smaller



firms to take on more cases, knowing that they could seek assistance if a case were to become litigious. In addition, we laid the foundation for a pro bono chapter 7 program with VLP. During my term, we worked on solving the conflicts issues, creating forms and a training and implementation process. In addition, we launched a consumer finance protection initiative (in cooperation with the AG's office and other BBA Sections) and continued to push legislation to reform the homestead and personal property exemptions (both passed in 2011). Within the Section, we formed a strategic planning task force, led by Mike Pappone, Nina Parker, Janet Bostwick and John Morrier. They did a great job! The final plan was completed after my term ended, and it was enthusiastically received by the Steering Committee.



Donald R. Lassman Chair of the BBA Bankruptcy Section 2007-2009

In 2008, the Section's Steering Committee discussed and endorsed a pilot program aimed at providing education on topics of consumer finance and bankruptcy to members of the military and their families. The Section, working together with the Massachusetts Department of Veterans' Services, has provided financial education seminars during the year at local VFW posts in Lynn, Wellesley, Framingham and Fitchburg and has been invited to attend and present educational seminars at the annual Conference for Women Veterans. In 2010, the President of the Boston Bar Association, Jack Regan, announced the formation of a Committee on Legal Services for Military Veterans and Their Families as part of an initiative by the entire Bar Association to explore ways in which it could be of assistance to members of the military. The Bankruptcy Section enthusiastically welcomed and supported the Association wide initiative in conjunction with its own on-going efforts, establishing an informal committee on Veterans Issues, providing training to its membership so that they could participate in the educational seminars, and providing training on the legal issues that are unique to members of the military so that those Section members interested in doing so could participate in the Association's initiative to provide legal services to members of the military.



Adrienne K. Walker, Chair of the BBA Bankruptcy Section 2008-2010



The major issues confronting bankruptcy law during 2008-2010 involved the economic crash in 2008, followed by the largest chapter 11 filings in history by Lehman Brothers, General Motors and Chrysler. While these mega cases grabbed the headlines, the driving force behind the historically high number of bankruptcy cases filed in Massachusetts was a direct result of the economic downturn, which was acutely felt in the real estate market. Our consumer practitioners were flooded with a high demand for assistance from low income debtors. In response to this need, the Bankruptcy Section once again stepped up to the plate and enlisted the aid of practitioners and created the Emergency Chapter 13 panel, which is comprised of expert consumer attorneys willing to handle a chapter 13 case on an emergency basis. I am most proud of the work of the Larger Firm Pro Bono Subcommittee to obtain an Ethics Opinion in late 2008 that enabled a greater number of

practitioners, especially those of us at larger firms, to accept chapter 7 pro bono cases from VLP. I am thrilled to note that due in large part to these efforts, the VLP has consistently been able to staff all referral cases since the program began in February 2010.



Nina M. Parker, Chair of the BBA Bankruptcy Section 2009-2011

Several projects during my term made me particularly proud. The first was the drafting, adoption and implementation of the Section's Strategic Plan. It is my hope that every future program, event, gathering, opportunity and decision will be filtered through the framework and contours which are expressed in the goals which the Section has set for itself. Through the efforts of many, we truly formulated a path for the future by defining what we call our "PLACE", an acronym consisting of P-programming, L-leadership, A-allocation of resources, C-civic involvement and E- encouraging participation. In addition, the reference "Book," a compilation of events during each co-chair's term is my gift to the Section. I assembled it with the express hope that it would serve not only as a resource and a guide for future Section leaders and practitioners, but also as a history of the Bankruptcy Section. The information in the Book is intended to centralize information about the Section as prior to this, we conveyed the past or the rules through institutional knowledge which handed down from Section chair to Section chair as the gavel was passed. The Book is comprised of stories, recollections and cartoons which are reminiscent of events that have occurred, contains information about the achievements and milestones that have been shared, and it also assembles reference materials which I hope will make it easier for future leaders. The "Book" opens with the mission statement and strategic plan of the Section so that it will be clear how the Section should operate in the future. It consolidates in one place the formal guidelines for Steering Committee composition, term limits, Section Awards criteria as well as a list of each of the Section Awards recipients. There is a compendium of reflections from each of the co-chairs who have volunteered their time and energy to serve as leaders of the Section. And finally, there are pictures of those who we have worked with throughout the years so that no one will be forgotten. I look forward to being a part of this organization for many years to come as we continue to develop our PLACE at the BBA.



Douglas A. Gooding, Chair of the BBA Bankruptcy Section 2010-2012



As I look back on my tenure as co-chair, I believe that we accomplished a lot, particularly in the areas of the Section's pro bono and diversity initiatives. My tenure as co-chair followed the "Great Recession." As a result, consumer bankruptcy filing rates were very high and there was great demand for pro bono services. A few of the highlights of my tenure as co-chair included implementing and rolling-out the Pro Bono Initiative following the BBA Ethics Committee Opinion; forming and implementing the BBA Bankruptcy Task Force on Diversity and Inclusion – which continues to this day; discussing and formally putting into place the retired/suspended/disbarred attorney protocol; and interacting with area law schools and students regarding opportunities in bankruptcy practice and having the Section adopt a permanent "law school liaison." There are many people (both lawyers and BBA staff) who devote

substantial time and effort to furthering the practice of bankruptcy law and access to the courts in Boston. I was a beneficiary of those efforts during my time as co-chair.



John T. Morrier, Chair of the BBA Bankruptcy Section 2011-2013

I started my involvement with the Steering Committee serving as co-editor with Guy Moss of the Section's newsletter in the early 2000s. That publication has evolved from print into an email format, and then, just prior to my term, into a web-based presentation, making the newsletter an online, always-available, no deadline publication. The opportunity is that you can publish anything – program announcements, photos, long articles, and more – at any time. The challenge is to retain the soul of the Section's voice to its members, and to not get lost in the junk mail folder. Our section's pioneering onto the internet served as the BBA's test for rolling this out for all sections, and continues to evolve. Two features that made the Newsletter particularly "ours": Tom Raftery's egg-eyed (and often pie-eyed) cartoon characters and their apt puns, and selections from The Superior Person's Book of Words. I'm pleased that Tom's cartoons are back "in print," and I'm working on getting Guy Moss to unpack and hand over his copy of The Superior Person's Book of Words.



Jeanne Darcey, Chair of the BBA Bankruptcy Section 2012-2014

I recall receiving a call from J.D. Smealie one afternoon in the spring of 2012. He asked if I would consider becoming the co-chair of the Bankruptcy Section for an upcoming 2-year term. The call came completely out of the blue; I had not anticipated anything of the sort. After running the logistics by the powers that be at Sullivan & Worcester LLP, I was able to accept the position. Then the fun started. I was anxious to speak with the current co-chairs, Doug Gooding, who would be transitioning off, and John Morrier, who would assume the senior co-chair role. My first task was to call John and Doug and offer to take them out to lunch. I figured I had to learn more about what I was really getting myself into, and a lunch invite seemed just the trick. I will never forget Doug's admonition: "This will take more time than you can ever imagine!!" John's statement, on the other hand, was more task-specific: "Start working on Bench/Bar NOW"!! I have complete admiration for the Section, its mission and the members who carry out its work. Our chairs and sub-committee chairs have no equal in the thoughtful, diligent and energetic work of the Section. It was truly an honor to help guide the Section during my tenure. My predecessors carved a smooth path for me to follow and my successors will undoubtedly continue to advance the initiatives and strengths of the Section. Onward.



REFLECTIONS ON THE LAST 25 YEARS



Order of Reflections

Judge James F. Queenan
Warren E. Agin
Mark N. Berman
Judge Henry J. Boroff
Janet E. Bostwick
Alan L. Braunstein
Margaret M. Crouch
Judge Joan N. Feeney
Daniel M. Glosband
Stewart F. Grossman
Judge William C. Hillman
Chief Judge Melvin S. Hoffman
William W. Kannel
Judge Carol J. Kenner
John G. Loughnane

Keith D. Lowey
Richard E. Mikels
Guy B. Moss
Jeffrey S. Ogilvie
Richard M. Page, Jr.
Nina M. Parker
David C. Phalen
Thomas J. Raftery
Stephen P. Reynolds
Judge Joel B. Rosenthal
Adam J. Ruttenberg
Edwin E. Smith
Jeffrey D. Sternklar
Herbert Weinberg
Anne J. White



JUDGE JAMES F. QUEENAN (Ret.)
MY MOST MEMORABLE CONFERENCE



You asked me to give you some “reflections” on bankruptcy events over the past 25 years, that is, since the first Bench Meets Bar conference.

As for general bankruptcy reflections of an open-ended variety, I have recorded many in my book *Looking Back*. Anyone involved in this project is free to use any portion of that text if he or she chooses to do so.

I do have a specific recollection of the very first Bench Meets Bar Conference. Jack Driscoll, an old friend from my days at Scituate, was then President of the Boston Bar. Jack came to me and told me of his idea of having a Boston Bar event consisting of a seminar devoted entirely to bankruptcy and the bankruptcy bar. Although he envisioned a true learning seminar, he also wanted it to have a large social aspect as well. And he had in mind the need for burnishing the luster of the bankruptcy bar, which we agreed had not often had good publicity. I of course said the idea sounded great, and the rest is history.

Jack’s enthusiasm for the event was sparked both by my long friendship with him and also by his friendship with Jim Gabriel, who had been a Cambridge neighbor of Jack’s wife, Jane Driscoll nee Bourque.

The Bench Meets Bar Conference continues to score the highest in my memories of all the conferences I attended over the years.



WARREN E. AGIN
DO COURT CLERKS DREAM OF ELECTRIC BRIEFS?

In the early 90s I worked at Barron & Stadfeld, a small firm with about 24 lawyers. Even though we only had three bankruptcy lawyers, with a busy chapter 7 trustee and foreclosure practice we had stuff going to the court every day. The firm had a room with three large copiers, and a couple of guys to copy and mail all the pleadings. Every day at about four, one of them made a filing run to the clerk’s office.

Pleadings had to be ready in time – no polishing edits at 4:28 pm! The whole system generated piles of paper, and you usually didn’t know someone had filed something in your case until the served paper copy arrived at your desk. There were a few attorneys around who weren’t very good about sending paper service out right away.

By the time I left Barron & Stadfeld in 1996, the bankruptcy court had a PACER system. You could dial-in by modem and see the case dockets, but not the pleadings. Electronic filing had arrived elsewhere in 1994, in the R.H. Macy case in Southern District of New York, with an ASCII based filing system called CLAD. ECF pilot programs started soon after in SDNY and four other courts, and rolled out in Delaware in 1999. The first local rules accommodating widespread ECF use arrived in Delaware in 2001. A comprehensive roll-out arrived soon afterward, and by 2004, ECF was in widespread use.

Massachusetts was at the forefront of the new system. I actually may have been the first private attorney to register for the service. I was so enthusiastic about having access. Of course the court had to enact rules for electronic filing. One issue was the deadline for filing. Paper filings had to be in by 4:30. The reason was a practical one – the clerk’s office closed for the night. Should the court allow electronic filing up to midnight? After all, computers don’t sleep. My opinion was the 4:30 deadline should remain – otherwise some firms would make people work ‘til midnight on filings and they would drag the whole system into late nights with them. I wanted to go home at a reasonable hour! Even though most attorneys took to ECF filing like fish to water, a few didn’t and they still had to be served in paper. At the beginning of 2005, ECF filing became mandatory, forcing the remaining old guard to get online and allow ubiquitous use of electronic service and filing.





MARK N. BERMAN

BEGINNINGS OF THE BENCH/BAR PROGRAM

My memories (not always accurate I warn you) of the beginnings of the BBA Bankruptcy Section's Bench/Bar Program start with my being asked by Henry Boroff, then Chair of the BBA Bankruptcy Law Committee (prior to its elevation to a BBA Section), to attend a meeting at the request of Jack Driscoll, then President of the BBA. I was serving as the BBA Bankruptcy Law Committee Vice-Chair and scheduled to take over as Chair the following September. Jack had decided to begin what has become a great tradition at the BBA, the annual Law Day Dinner, but was troubled that the Law Day Dinner would not honor the contributions made by our bankruptcy judges. The meeting, attended by Jack, Judge Queenan, Judge Gabriel and me, took place at the Bankruptcy Court in Boston. Our charge was to find a way to honor the Massachusetts bankruptcy judges, and the BBA Bench/Bar program was the path chosen. We decided that the BBA Bankruptcy Law Committee would present an educational program followed by a dinner to take place around the time of the Law Day Dinner. Since turnaround is always fair play, upon becoming the Chair of the BBA Bankruptcy Law Committee I asked Henry to serve as chair of the Bench/Bar Program Committee. It was decided that the Parker House would be the venue, with the educational program taking place in the Press Room on the second floor and the dinner upstairs in the ballroom. To highlight the dinner we invited then Circuit Judge Conrad Cyr (formerly a bankruptcy judge sitting in the District of Maine) to make a speech. Small gifts were presented to the bankruptcy judges as a token of our appreciation for their contributions and a good time was had by all.

The BBA Bankruptcy Section's Bench/Bar Program has since been copied by other sections of the BBA. In its early years it annually produced a significant surplus that was used by the BBA to fund a vast array of programs that otherwise could not be expected to pay for themselves in a monetary sense - just another instance of the Boston bankruptcy community giving back. I'm proud to have been there at the beginning. What a wonderful seed to have planted.





JUDGE HENRY J. BOROFF

BBA MEMORIES



My first memories of what was then the “Bankruptcy Committee” of the Business Section of the BBA was attending its monthly lunches in the early 1980s. Dan Glosband was the chair. I very much looked forward to those lunches and learned a great deal of bankruptcy law from those who gave presentations. I remember that Dan was followed by Peter Fine of Choate Hall, who did a wonderful job as well. In the late 1980s, I was coming off my chairmanship of the Commercial Law League New England District, was disappointed with its renewed emphasis toward commercial collection work and away from bankruptcy practice, and was looking for a way to get more involved in bar activities and continuing legal education in bankruptcy law.

One day I learned that Peter Fine’s chairmanship was drawing to an end. I did not know Peter very well, but we had represented people with similar interests in the past. I called him and asked how I could get more involved with the Bankruptcy Committee. To my surprise, Peter asked me if I wanted to chair the Committee, and when I said that I might be interested in that chairmanship some day, he announced that I was the new chair - a very productive phone call. I held that position that from 1987-1990.

As chair, I continued the monthly lunch programs, and initially believed that those programs would comprise all of the Committee’s activities, then and in the future. But two opportunities soon presented themselves. First, the bankruptcy judges announced their intention to revise the Court’s local rules. In response, the Bankruptcy Committee of the BBA, in collaboration with the Bankruptcy Committee of the MBA (Paul Daley was its chair), crafted and presented proposed rules and comments to the Court for its consideration. As I recall, few of our proposals were accepted; however, the exercise itself set a pattern of attorney involvement in rule making that continues today in the form of the Court’s Bench/Bar Local Rules Committee.

The second opportunity occurred the year after my chairmanship ended and I had passed the baton to Mark Berman. One day, Mark and I received telephone calls from Jack Driscoll, the then President of the BBA. He asked whether we would be interested in creating a bench-bar program in bankruptcy. For my part, I responded that - while I had had extensive experience with running continuing legal education programs (having done so for years with MCLE, the BBA, the MBA and CLLA) - it was extremely unlikely that all of the judges would participate in such a program. So, I was quite surprised when they all accepted.

Mark Berman appointed me to serve as the dinner chair of that first program, and attorney Tom Miller immediately volunteered to help. Tom’s assistance was invaluable. He (for reasons I never completely understood) lunched daily in the fancy upstairs restaurant at the Parker House in Boston and had accordingly become well acquainted with its administrative staff. So, we sent him off to negotiate with that hotel. He came back with an offer from the Parker House for a sit-down dinner of surf and turf with all of the “fixings” for what we considered a very low price and use of the upstairs ballroom to boot for no additional cost. Mark and I geared the educational portion to cutting edge issues of bankruptcy law and asked First Circuit Judge Conrad Cyr (formerly a bankruptcy judge in Maine) to speak at the dinner. The quality of the program (and, of course, the food) produced bankruptcy law practitioners in droves over the following years and continued as an educational program followed by a sit-down dinner with a speaker (including then First Circuit Chief Judge Stephen Breyer, later First Circuit Chief Judge Juan Torruella, and the chief of the Boston office of the Federal Reserve). Although the form of the bench-bar program has changed somewhat over time, its dedicated chairs have sustained its quality for twenty-five years.

More generally, I attribute almost everything that I have valued in my career to its beginnings with the BBA Bankruptcy (then) Committee. The continuing legal education was outstanding and the networking led to many referrals that sustained my practice. But far more important, the friendships that grew out of the relationships developed there contributed to my self-confidence as an attorney and the warmth of the familial atmosphere that has always been the hallmark of this organization was a comfort to me in good times and bad. It has been obvious to me, over the last 40 years or so, that this coming together of practitioners with complementary interests and perspectives has contributed in similar ways to the lives of many of its other members and I can say, without hesitation, has elevated the practice of bankruptcy law in the District of Massachusetts.





JANET E. BOSTWICK REFLECTIONS OVER TIME

Recollection 1: In the 1980s

When I started as a new bankruptcy lawyer in the early 1980s, the partners I worked for brought me with them to the BBA Bankruptcy Committee monthly lunch. The lunch was held in the basement of the BBA, since the BBA had not expanded to the next building yet.



My memory is it was a long conference table, full of men, with no one I knew except those I came with. And since it was in the basement, there were no windows and the lighting was dim. There were few, if any, women or minorities at the table. The lunches were monthly, and always full of the regular bankruptcy practitioners. The bankruptcy bar was collegial – you would see the same faces both in court and at the BBA. Like everyone else, I kept attending. And about five years later, when I walked down the stairs, I was struck by the fact that I had gotten to know most of those same faces as colleagues.

Recollection 2: 1992

In 1992, Mark Berman asked me to succeed him as chair of the BBA Bankruptcy Committee, becoming the first female chair of the Committee. The Committee structure was much simpler then. We had our regular monthly meetings, and the chair was in charge of lining up the speaker. We did not have many subcommittees. There had been a long-standing clerk committee, which was a liaison with the bankruptcy clerk. There was a small consumer committee that had been recently formed. When I was appointed, the fact that I was a woman was irrelevant. Most frequent advice I got? Don't forget the cookies! (Back then, the BBA supplied lunch free of charge. And at every meeting, we always had cookies.)

Recollection 3: 1993/4

While I was chair of the BBA Bankruptcy Committee, we had the first instance of a disbarred bankruptcy attorney. The attorney was attorney of record in more than 400 consumer cases, and he was in the process of being disbarred. At the time, this was highly unusual (although regrettably it has occurred more frequently since.) The Bankruptcy Judges called to see what the bar could do to help. There was no outline of how to handle the situation, so we had to figure out what the bar could do and how to do it. We worked with the court, consumer attorneys, the bar counsel, and other bar associations to come up with a limited pro bono program.

I agreed to serve as administrator, so I sent letter to the members of our Committee to solicit volunteers. To this day, the response I received to my letter is a reminder of the generosity, support, and unity of the bankruptcy bar. Back then, there was no email and no internet, so everything happened on “snail mail” pace. And yet, by noon the day after the letter had been mailed, I had responses by fax or telephone from several of the leading bankruptcy firms agreeing to take on one, or in some cases, several of these clients on a limited pro bono basis. By the end of the day, the number had grown to more than a dozen. In the end, we had more than 100 lawyers or firms volunteering to step in to assist.





ALAN L. BRAUNSTEIN
JOE BRAUNSTEIN, THE DEAN OF TRUSTEES



The city was in the midst of a thickening January frost and it was the time of night when a ringing phone makes you think: catastrophe. “There’s a fire.” It was my father, Joseph Braunstein. “And water from the sprinklers is flooding the street. It’s freezing over.”

My father was referring to a partially constructed, vacant building with the only near-complete “residence” being an opera-style penthouse. Incredibly, a fire had consumed the “opera” and the sprinklers sparked an 18 story waterfall that busted through the lobby’s glass doors into the bitter cold night and onto Tremont Street. Earlier that week, after his appointment as Chapter 11 trustee, my father had climbed all 18 flights (the elevator had yet to be installed), first with representatives of the secured lender, and then a prospective purchaser. He was 74 years old.

Safety was Joe’s paramount interest, asset preservation his obsession. Upon his appointment he had made sure the building was insured. But that night, seeing the waves of cascading water, the security guard had fearfully fled the premises. I offered to help, remembering everything my father had told me about what a trustee might encounter, especially immediately after being appointed. Once he went to shut down a nightclub that had been converted to a Chapter 7 and was confronted by the disgruntled owner--whose lawyer had not informed him of the conversion--pointing a gun at my father’s head! However, remediating downtown chaos in sub-zero temperature was unprecedented.

“The Fire Department is going to shut off the water,” he said. “I called the president of the security company and he’s on his way to the site with two additional guards. And locating a maintenance company after midnight is like finding a Sherpa in a waterpark; but I knew someone from a trustee case long ago and his workers are on their way. The Fire Department joked that Hans Brinker can skate from the Parker House to the Theatre District. I’m on route.” “What can I do?” I blurted. My father responded, calmly, “Let the secured party’s attorney know about it; send him an e-mail. I can’t drive and text.” This calamity would have been the ice version of the “Towering Inferno,” but Joe Braunstein had, across a titan’s career, measured each contingency. Later, the insurance covered the fire and water damage, and the property was conveyed pursuant to a joint trustee/secured party plan. Today, it’s one of Boston’s hallmark residences.

Not surprisingly to me, my father was admired as the dean of trustees. As Judge Hillman once remarked, “Joe Braunstein would never leave a nickel on the table.” Once Joe asked a debtor what time it was, then keenly observed him roll up his sleeve to obtain the answer. The watch--an undisclosed Rolex--was later sold by Joe, generating \$20,000 for the estate. On another occasion, he asked a debtor how she had travelled to the section 341 meeting, and, after she answered, Joe demanded the keys to the unscheduled Jeep Grand Cherokee. He then called Paul Saperstein, Auctioneer.



My father’s example of dignity, integrity, morality, patience and restraint served reliably as a beacon for all trustees. He had great empathy for any debtor deserving of a fresh start; yet he would never tolerate a debtor utilizing bankruptcy for disingenuous purposes. The gracious manner in which he was honored during and after his distinguished career is magisterially poignant. It is a testament to my father that his bankruptcy brethren and the judiciary recognized not only his indefatigable stewardship of his duties as an attorney, trustee, and mentor, but also his prodigious warmth, benign temperament, immeasurable kindness and munificent heart.





MARGARET M. CROUCH A CAREER IN CLERKING



I have been asked to offer my reflections on my service to the Bankruptcy Court. My career as a law clerk to Bankruptcy Judges Glennon, Gabriel, and Feeney began in October of 1985, coinciding with Hurricane Gloria and my wedding. The storm was destructive, but the career and the marriage have been rewarding.

Judge Glennon was authorized to employ a third law clerk in the late 1980s because of the work associated with the case of GHR Energy Companies, Inc. I joined Joe Butler, now a standing Chapter 7 trustee, and Celeste Duffy as a law clerk in Worcester on October 1, 1985. Like many recent law school graduates

obtaining a new position in the bankruptcy arena, learning to spell bankruptcy was the first order of business. The sink or swim milieu of chambers, however, was the perfect introduction to bankruptcy law and the skills required to perform the duties of a law clerk.

Judge Glennon retired shortly after I began my clerkship and Judge James Goodman, then a bankruptcy judge in Maine, sat by designation until Judge Queenan was chosen as Judge Glennon's successor. During Judge Goodman's brief "term," the decision in *Boroff v. Tully* (In re Tully) was issued. The opinion of the Court of Appeals, affirming the decisions of the bankruptcy court and district court is one of the most frequently cited in adversary proceedings involving section 727(a) of the Bankruptcy Code. The trustee in the Tully case, of course, is now sitting as a bankruptcy judge in Springfield. Judge Gabriel invited me to transfer to Boston as his clerk in early 1986. I clerked for Judge Gabriel until he passed away. My first impression of Judge Gabriel is a lasting one: I was impressed by his dapper appearance. With hindsight, he reminds me a bit of Hercule Poirot as played by David Souchet, without the affectations.

The first decision I drafted for Judge Gabriel was *In re Energy Resources Co., Inc.* which was appealed to the District Court, the Court of Appeals and the United States Supreme Court, where all the lower court decisions, including Judge Gabriel's, were affirmed. Judge Gabriel issued a number of significant decisions during his tenure, including *Murphy v. Meritor Savings Bank* (In re O'Day Corp.), which involved a leverage buyout. Of note, Judge Feeney preceded me as Judge Gabriel's clerk so there were large shoes to fill.

Following another interlude where Judge Goodman stepped in to ease the transition between Judge Gabriel's passing and the appointment of his successor, I accepted Judge Feeney's offer to continue as her law clerk, thus beginning a working relationship and valued friendship of more than twenty years. During that time, she has accomplished much. I will leave her impressive list of achievements to others. During her terms, she has issued hundreds of decisions, a number which are important, and some of which are notable for their length, including *In re American Bridge Products, Inc.*, one of the few cases involving the conduct of a state court receiver. Five years later, her decision ultimately was affirmed by the Court of Appeals. Other significant decisions include *Braunstein v. Beatrice* (In re Beatrice), which was affirmed by the BAP, and its progeny: *In re Barbosa*, and *Dean Witter Reynolds Inc. v. Printy* (In re Printy), both of which were affirmed by the Court of Appeals. I could go on but for anyone interested in the full list Westlaw is available.

Some might wonder why I would remain with the Bankruptcy Court so long. Space precludes a lengthy response, but one thing is clear. The camaraderie within chambers and among chambers has been such that the work, which is never dull and frequently both challenging and interesting, remains a source of satisfaction and pride. In particular, I count Judge Hillman, with whom I write the Bankruptcy Deskbook, and his former law clerk, Molly Sharon, as particularly valued colleagues and friends.



JUDGE JOAN N. FEENEY
ANNIVERSARY MEMORIES



I am a huge fan of the BBA Bench Meets Bar, but it is not only because of the event's superb educational program and the opportunity to meet other bankruptcy professionals. I have always considered the BBA Bankruptcy Bench Meets Bar program each May as the anniversary of my appointment as a bankruptcy judge. Even though I was not sworn into office until October 6, 1992, it was on May 14, 1992, immediately after the conclusion of the educational program and before the commencement of the social reception, that I called the office to obtain my messages. My secretary advised that a Judge Breyer had called. When I returned the call, now Supreme Court Justice Breyer, who was then Chief Judge of the First Circuit

Court of Appeals, advised me that the court of appeals had selected me for the position as United States Bankruptcy Judge for the District of Massachusetts. For the past twenty-three years, I have attended the Bench Meets Bar fondly remembering the second Bankruptcy Bench Meets Bar!



DANIEL M. GLOS BAND
MEMORIES OF THE "EARLY DAYS"

I started in practice in 1969 with Widett & Kruger, where Joe Kruger, Irving Widett, Bob Robinson and Charlie Gamer were the bankruptcy lawyers. We were located on the top (11th) floor of the since-demolished First National Bank of Boston headquarters at 1 Federal Street; Bingham Dana was downstairs. We would exit the side door of the building, cross Milk Street and take the back elevator at the Post Office and Courthouse (to which the bankruptcy court has now returned) to the 11th floor bankruptcy courtrooms and referees' chambers. There was no building security.

The referees were Thomas Lawless, Paul Glennon and Ed Hannon. The law was The Bankruptcy Statute of 1898, as amended, a/k/a the Act. There were no procedural rules and no regularly reported bankruptcy court decisions. Anyone who submitted a brief in support of a pleading had a distinct advantage. There were also no fax machines, computers, overnight delivery services or conference calls.

Banks and insurance companies made unsecured loans and held them during bankruptcy and chapter 11 cases. They were represented by (relatively) large firms which had no full-time bankruptcy lawyers. Lawyers that focused on commercial and secured finance at those firms minored in bankruptcy: Fred Fisher at Hale & Dorr; Peter Coogan and Charlie Normandin at Ropes & Gray; Irving Hellman and Ed McHugh at Nutter, McClennen.

There were no financial advisory firms and no CRO's. The closest was Exeter International, run by George Friedlander, which handled liquidations for the large banks. None of those banks exists independently today: The First National Bank of Boston, The New England Merchants National Bank, Shawmut National Bank.

Secondary lenders (James Talcott, Walter Heller) factored accounts receivable and financed equipment purchases. Most commercial bankruptcy lawyers (or their firms) had a background in this type of lending or had a collection practice and followed the claims into bankruptcy. Among the notables were Sam Rosen, Sydney Kagan, Bernie Riemer, Ralph Cohn, Harry Pollack, Henry Friedman, Frank Shapiro, Matthew Brown and Henry Gesmer. Most of them were ethnically disqualified from joining the large firms; Riemer & Braunstein and Brown Rudnick are legacies of several of them.

The practice was local and regional; cases were filed in the venue of the debtor's principal place of business; rarely were there "out of town" lawyers involved and never did a Massachusetts company file in Delaware or New York. I did not see a case with international implications until 1983.





STEWART F. GROSSMAN TIMING IS EVERYTHING

JUDGE LAWLESS

It was a good thing for me that I smoked cigarettes in the 70s. Chief Judge Thomas Lawless until 1978 appointed Bankruptcy Receivers and Supervisory Receivers (the Judge's invention) in cases that troubled him. Every day there were several men who hung around the hallway outside the Judge's chambers hoping to be selected as a receiver in a case that day.

Very often I would appear before Judge Lawless at a hearing. From time to time he would call a recess so he could take a break to have a cigarette. I often would be invited into his chambers to join him for a cigarette. He would always announce to everyone in court that I was going to join him in his chambers for a cigarette and we wouldn't be talking about the pending hearing.

That was always fine with me because Judge Lawless would usually tell me, as we were lighting up our second cigarette, that he had a new case that he thought would be "right up my alley" because assets were missing, everyone was fighting and the lawyers were not getting along. Although cigarettes are bad for you, in those days it was a marketing tool and good for my career development.

JUDGE LAVIEN

My first confirmed Chapter XI Plan was a Judge Harold Lavien case. He didn't believe my client, who was in the explosives business, was capable of running the business successfully after confirmation, although almost every creditor voted for the plan.

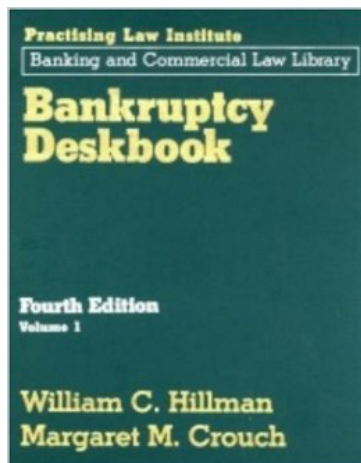
The Judge expressed reservations about the feasibility of the plan before signing the Confirmation Order. In his unique way, he expressed his feeling that this company would not be able to operate profitably. He told me that he would sign the Confirmation Order only if I would agree to defer my allowed fee for six months. He said that if the company was operating and profitable in six months my fee could then be paid. I agreed with the Judge's condition. I got paid in month six and approximately three months later the owner of the business died suddenly and the business failed. Timing is everything.





JUDGE WILLIAM C. HILLMAN BENCH AND BAR MEET BAR

Over the last twenty-five years, the Boston Bar Association's Bench Meets Bar program has hosted cutting edge educational programs appealing to both those specializing in consumer and business bankruptcies. As an annual participant, I have had the privilege to work with some of the finest attorneys in New England to help craft these presentations. But these offerings, while substantial, are only half the picture. Each May, nearly the entire bankruptcy bar congregates in a local hotel ballroom to take advantage of its unique collegiality. As I was originally an outsider to Boston, I quickly became the beneficiary of this good will, and in the years since have watched as many young attorneys were similarly welcomed. A social bar is an engaged bar, which is evident from the number of volunteer initiatives the BBA has been able to pursue with great success. Of course one might think starting the social networking—"The Bench and Bar meets Bar"—before the presentations sounds counterproductive, but it has really loosened up both the audience and the speakers for the benefit of the entire program.





CHIEF JUDGE MELVIN S. HOFFMAN COMING FULL CIRCLE

Some of you who appear regularly in the bankruptcy court's current digs in the McCormack Post Office and Courthouse might not know that this is the second time around for the court in this Art Deco monument in Post Office Square.

When I arrived at the court in 1976 to begin my term as a law clerk for Harold Lavien, I came to the same floor of the same building. In those days, however, the entire bankruptcy court for the District of Massachusetts occupied one half of the 11th floor. Turn left when you exit the elevators and look at the space at the end of the hall. The totality of the court's quarters—three judges' chambers, three courtrooms, the clerk's office and assorted other facilities—fit into the space currently occupied by the clerk's office.

You'd think that with such a cramped arrangement it would have felt crowded, but it didn't. Maybe people were smaller in those days. With three judges, Lavien, Tom Lawless and Paul Glennon, in such close proximity one would have expected they would be running into each other all the time. Somehow they managed never to, which was pretty much by design.

In the 1970s the bankruptcy court's only permanent location for holding court in this district was in the McCormack POCH. Once a month or so, Judge Lavien would ride circuit, chauffeured by a law clerk because he hated to drive, conducting a day of hearings either in Taunton or Worcester. In Taunton he used a courtroom in the state courthouse on Taunton Green. In Worcester he held hearings in the abandoned federal courthouse downtown. This was before the building underwent its historic restoration and renewal in the 1990s. Back in 1976, the place was cold, dark and empty.

Looking at our three impressive homes today, in the splendid POCH, the stately Donohue Federal Building and the glassy modernist Springfield Courthouse, one cannot help but marvel at how far the court has come since those days long ago. Our surroundings reflect the rise in stature of bankruptcy practice and the prominent role of bankruptcy law in the nation's economic and legal development. For those of us who remember where it all started, in a corner of the 11th floor at Post Office Square, these achievements are all the more astonishing.



WILLIAM W. KANNEL
COLLEGIALLY IS THE KEY

The Bankruptcy Bar in Boston has always been marked by a unique sense of collegiality and fair play. Yes, we are zealous advocates for our clients. And yes, having appeared in many Bankruptcy Courts throughout the country, the level of practice in the Massachusetts bankruptcy bar is uniformly high and sophisticated. But what sets us apart are the ongoing professional relationships among its practitioners which are uniformly courteous, civil and practical.

I experienced this very early on in my career back in the mid-80s as a first year associate. Judge Gabriel was still on the bench and Rick Mikels sent me on a couple of hearings that had at best an outside chance of succeeding. I'm not sure I can even recall the subject matters. To the best of my recollection one may have been a Section 506(c) issue and the other may have been a very uphill motion for relief from stay. What I do remember is the patience of the other attorneys in the courtroom (although remember back then Judge Gabriel's courtroom was more like a conference room) as I struggled to find my way through some complex issues.

Now that I am a more "experienced" member of the Bar, I still find this to be a truly remarkable attribute of all of our work together.





JUDGE CAROL J. KENNER (Ret.)
TIME WARP

You know it's the late 1970s, 1980s in the Bankruptcy Court, when:

- (a) It's Wednesday afternoon and J. Lawless and bankruptcy lawyers are playing golf together;
- (b) J. Glennon begins the day by saying "Good morning, Gentlemen" to a courtroom full of male and female attorneys;
- (c) Courtroom attire consists of plaid polyester sport coat and khaki polyester slacks (yes, Bernie Reimer, we're thinking of you);
- (d) J. Lawless invites the lawyers to join him back in chambers where the air is thick with cigarette smoke;
- (e) The only woman lawyer in the courtroom is Assistant US Attorney Mary Brennan;
- (f) Only Harold Lavien wore a robe;
- (g) Judges were called referees;
- (h) Disputes on "summary" vs. "plenary" jurisdiction paid for college educations of the children of bankruptcy lawyers;
- (i) Lawyers remember the havoc wreaked by Marathon Pipe Line;
- (j) People used Roman numerals;
- (k) When your client has absolutely no legal basis for his claim, you repeat "court of equity, court of equity" until you win; and
- (l) The despised "economy principle" puts a cap on lawyers' fees.

All of the above.



JOHN G. LOUGHNANE
A QUARTER CENTURY OF BENCH/BAR

I spent the summer of 1989 as one of forty-three summer associates at the office of Goodwin, Procter & Hoar. Most of the summer was spent working on various real estate projects with some brief exposure to other practice areas. After finishing my third year of law school in the spring of 1990, I served a one year clerkship with a United States District Court judge. The daily exposure to civil and criminal litigation during the course of the clerkship made me question my previous determination to pursue a real estate practice upon returning to the firm. As it turned out, my own experiences aligned perfectly with changes in the economy. When ready to join the firm in the fall of 1991, there was little need for junior real estate associates. If I wanted to see a courtroom, I was told, then head to the insolvency group – those were the attorneys going to court in 1991.

Despite the absence of any law school course work in insolvency, I was fascinated by the work and very much enjoyed the discrete group camped on the second floor of Exchange Place dealing with various insolvency issues. Jon Schneider, Dan Glosband, Michael Pappone, Evan Jones, Chris Katucki, Steve Ellis, Jeff Wolf, Joe Baldiga, Mary Daly, Scott Cooper, Eric Bradford, Andy Cohen, Judy Solomon and others formed a formidable team tackling a variety of issues on behalf of corporate debtors, lenders, official committees and other parties in interest. I was clerking during the 1991 inaugural Bench/Bar but I distinctly remember attending the 1992 edition and many others throughout the years. The event has been a hallmark of the BBA Bankruptcy Section programming year and is valuable from both an education and networking perspective.

I recall early years when the discussion would rage about conflicting court cases and ambiguous Code provisions. It was hard for me to tell whether my confusion stemmed from my lack of experience or complete chaos then existing on various issues. With experience came the opportunity to help prepare materials for the conference – first in support of senior partners who were invited to participate then eventually for my own role as panelist. I recall speaking at least at the 2004 session on Significant Supreme Court and Court of Appeals Decisions and then again in 2013 on Attorney-Client Privilege Issues. No experience gave me greater appreciation for the event then serving last year as the junior Co-Chair of the Section and, in that capacity, helping to prepare and run the event. I now understand the secret to the success of the event all these years: the unparalleled engagement of the bench, the dedication of members of the bar, and the instrumental role of the BBA leadership and staff in tending to all the logistics necessary to make the event succeed without a hitch.

The Bench Meets Bar has played an important role these past 25 years in shaping the quality of practice in this district for both consumer and commercial practitioners alike. Many thanks to all the members of the bench, bar and BBA who have contributed to its success and best wishes to those who will carry on the tradition in the future.





KEITH D. LOWEY

THE RIGHT PLACE AT THE RIGHT TIME

I was fortunate to be in the right place at the right time. I accepted a job to become the corporate controller of a start-up company that was to acquire Sullivan Stadium. I thought that I would be getting involved with a vibrant, well capitalized company. Little did I know that the start-up would never acquire the targeted asset (and would later fold) and that I would be absorbed by a company that was in tough financial shape after having tried to promote the latest Michael Jackson tour. From 1986 to 1989, I spent all of my time assisting my employer in an attempt to reorganize, sell and stabilize the business of running Sullivan Stadium. In early 1987, the decision was made to file a Chapter 11 to stop a foreclosure by one of the company's lenders. Little did I know at that time that this was the beginning of a whole new career for me and that of a small accounting firm that I would join three years later.

Throughout the almost three year process of operating while in Chapter 11, I had the pleasure to deal with some of the finest and most experienced bankruptcy professionals in the Northeast. Even Steve Cooper who would ultimately become the CEO of the troubled Enron had a role in the case. I was truly fascinated by the role and responsibilities that an accountant could take in the world of the insolvent company. The more I did and the more I explored, the more I became convinced that I both enjoyed the work and that there appeared to a great opportunity for an accountant to specialize in the world of insolvency.

While completing a year in a new entity formed by Robert Kraft that would ultimately acquire the then Foxboro Stadium, I continued in the role of "last man standing" while the Stadium case wrapped up.

Then in 1990, I decided to join a couple of old friends, with whom I had worked at Arthur Andersen & Co., that had recently acquired an existing CPA firm. My job was to try and develop an accounting insolvency practice. There was great opportunity at that time. There were very few accountants who had any experience in this practice area and most of them were at the larger accounting firms. Over the next almost 25 years, Craig Jalbert and I would participate in thousands of bankruptcy cases, liquidations, forensic investigations and tax engagements most of which were in the world of the insolvent and/or troubled business. An industry that was practiced by a few is now occupied by many – as this dynamic and interesting field got more attention. The days of being almost a pioneer in the tax practice of the insolvent debtor, as very little authority existed in the early 1990s, have changed to the point where many seminars take place each year on the subject and new industry organizations have been formed that focus on turnarounds, insolvency and reorganizations.

Craig and I truly were at the right place at the right time and are very thankful to have been able and continue to work among some of the finest professionals in a field that continues to develop and change as time goes by. We now look forward to economic times that continue to get better so that financial markets once again allow for the acquisition of and investment in the troubled business.



RICHARD E. MIKELS

MY INTRODUCTION TO THE FIELD



On April 1, 1974, after a year and a half as a government lawyer in Washington D.C., I began my career as a private firm attorney at Cohn, Riemer & Pollack. My goal was to be a corporate lawyer. However, much of my first day was spent with the managing partner, David Riemer, and another partner, (the great) Joe Braunstein, as they attempted to convince me to become a bankruptcy lawyer. Once that was out of the way, I was shown my new office. It was the firm library, although many also considered it the firm lunchroom. I was told that it would be an easy first week because David's father, Bernie Riemer, was on vacation. They made clear that my life would never be the same after Bernie returned. David's younger brother, Stanley, came by the library to see me and to assure me that I had an important job - because it was the one his father had planned for him.

For most of the first week, since I was in the library anyway, and knew little about bankruptcy, I read Collier on Bankruptcy cover to cover, met some nice folks during the lunches in my office and started working with Joe. I also met a lot of folks who became lifelong friends. I won't mention them all, but one is worth mentioning because he is well known to anyone interested in this reflection. Judge Joel Rosenthal was one of the colleagues that I met that day.

By Thursday of that week, I thought I digested most of Collier, and I was ready to get going. Ralph Cohn came into the library and asked if I would like to go to a meeting. Ralph, (Joe Braunstein's father-in-law), was in his late 70's at the time, and I was very excited to have the opportunity to watch him work. We left the office and walked over to 100 Federal Street. At the time, 100 Federal was probably the nicest building in the financial district, and I was in awe as we entered the office of Irving Widett of Widett & Widett. Irving and Bernie Riemer were



probably the two most famous bankruptcy attorneys in Boston, and Irving's enormous conference room contained a Who's Who of Boston bankruptcy attorneys, circa 1974. I had never been in a room with such a fabulous ocean view. The surroundings and the company were quite overwhelming. I got to meet most of the attendees because almost all came over to greet Ralph, who graciously introduced me around. I will never forget the respect and affection everyone showed for Ralph Cohn. I remember thinking how wonderful it must be to practice in this type of profession for so long and to receive such genuine affection and respect as was displayed toward Mr. Cohn from so many of the leaders in the field.

As you can imagine, I was quite intimidated by the people and the surroundings. I took solace in the fact that I had little to do except observe Ralph and the others and see how they operated in a big meeting like this. That thought was very effective in keeping me calm for about twenty minutes. Then Ralph announced that he had to leave, but that Mr. Mikels would represent his interests. I will never forget my level of surprise and shock as Ralph left the room. Fortunately, I was seated next to Herb Kahn (a young and well-respected practitioner), who leaned over and told me not to worry and that I should just do what he did and I'd be fine. I did and he was right. I was fine that day, and most importantly I felt like a real bankruptcy lawyer.





GUY B. MOSS

THE IRONIES OF MY SUPREME COURT EXPERIENCE

In 1990 I had the privilege of arguing a case before the Supreme Court, *United States v. Energy Resources Co., Inc.*, 495 U.S. 545 (1990). The case concerned a bankruptcy judge's ability to order tax authorities to apply partial tax payments first to so-called "trust fund taxes" of the debtor, rather than to non-trust fund taxes where the result would be to maximize the potential personal liability of "responsible officers" for such taxes. The Court held, 8-1, that a judge may do so where the action is necessary for the success of a reorganization in chapter 11.

Looking back, I realize that apart from wrestling with the merits of a matter and hopefully prevailing, one of the pleasures of the practice of bankruptcy law has been experiencing the unusual twists, almost comical paradoxes, a matter often takes. So you can appreciate that even the cases at the highest level may be subject to such vicissitudes, here's my memory of the behind-the-scenes "ironies" from the *Energy Resources* matter:

- At the First Circuit argument, another case with the same issue was surprisingly scheduled the same day. By luck, the cases were combined, mine became the lead case and because a case already before the Supreme Court on my issue was later remanded as moot, mine was enabled to get there next.
- The issue litigated with the IRS had been a throwaway (but mandatory) point in a preference settlement that brought only \$15,000 into the debtor's estate. The fees for the appeals, of course, came to be far higher, although had we lost at any level we would not have pursued the matter further.
- The expansive approach the Supreme Court accepted had been viewed as too dangerous to argue in the lower courts because we thought the facts didn't support that particular argument. The ultimate holding only questionably applied to my case's facts (although it did to the companion case).
- My client was a creditors' trust under a plan, the prime beneficiaries of which were the very tax authorities fighting with the trust, and which, in effect, were also paying my firm indirectly, given that the trust lacked sufficient assets to pay their priority claims in full.
- Subsequent to the decision, the Government has never achieved, nor perhaps even sought, a small change in federal law to save what the IRS had alleged cost it alone approximately \$40 million a year in lost recoveries.
- As far as I know, the IRS never pursued the debtor's president for the unpaid trust fund taxes, despite fighting for the greatest ability to do so.
- My client understandably didn't care who won the case because either way the trust had to distribute its available, but inadequate, net funds to the same tax authorities. In short, while the *Energy Resources* holding may have had an impact on posterity, it clearly didn't on what the trustee and I were doing!

THE CHICKEN FEED THAT WASN'T

Bankruptcy cases have notoriously given rise to puns. Here's a memory from a 1980s case in Maine, *In re Hillcrest Foods, Inc.*, before then Judge Frederick Johnson. I was counsel to the debtor in a chapter 11. Hillcrest raised and slaughtered chickens. On the filing date the Company had millions of chickens of different ages in numerous severely crowded, large coops throughout Maine. The then Bank of Boston had a blanket lien on the assets, notably, of course, the chickens. Our initial problem was to get the feed, still located in railroad cars, to the chicken coops so that business could continue in the ordinary course. That, naturally, required a cash payment to the railway. Hence, we found ourselves facing an emergency hearing late on a Friday of the first week of the case to address the use of cash collateral.

Things had moved so fast that both lawyers were "winging" it in court. Intellectual arguments over secured creditor issues and a focus on obscure provisions of the Bankruptcy Code dominated. The judge's eyes were glossing over and dinner beckoned. Suddenly, the President of the Company, a true farmer, began tugging vigorously at my suit jacket to apprise me of some information. I asked for a short break, after which I rose with a broad smile. Looking squarely at the judge, I stated: "The legal discussion has been intriguing, but there's only one farmer in this room. It appears that the chickens last ate two days ago. But after three days, I'm told, one thing and only one thing is going to happen. If the chickens have not been fed, they will begin to eat each other. Therefore, your Honor, unless we get immediate relief today, by Monday morning this case and the Bank are going to face a very unusual collateral structure. There will be but one surviving chicken and he's going to be the largest and meanest thing you've ever seen in your life!" The order entered within minutes. And, as one might say contradictorily, "That ain't chicken feed."



JEFFREY S. OGLIVIE

A CONCESSION TO JUDICIAL AUTHORITY

The well-known Frank Kirby was opposing the Bank's motion for relief from stay before the Honorable Harold Lavien. With great emotion, Frank argued that the Bank was unfair to his client, had refused to rewrite the mortgage loan, was trying to put his client out of business, etc., etc. In closing, after assuring the court that a check to pay the arrears in full would be arriving at his office soon, he took his seat with these words: "But I'll let you be the judge." Even Judge Lavien chuckled. And then allowed the motion.



AN EXECUTIVE DIRECTOR'S NOTES ON 25 YEARS

RICHARD M. PAGE, JR.

The BBA is pleased to celebrate the 25th Anniversary of the Bankruptcy Bench Meets Bar Program. Through the years this program has served as the annual gathering place for practitioners, judges, court staff and many others who have dedicated their careers to the bankruptcy practice. The longevity and vibrancy of the program is a testament to the spirit of the bankruptcy community. We hope that judges and attorneys will continue to volunteer their time and talents educating the bar, serving the community, and fostering collegiality in the practice for years to come.





NINA M. PARKER
A ROSE BETWEEN THORNS



I started my fledging career as a bankruptcy attorney in 1981 at a time when the Bankruptcy Court was located in its current building in Post Office Square. I have vivid memories of my first ventures into the building. The clerk's office was an open and causal affair, with a counter and a file room consisting of movable stacks where the papers were stored in a variety of folders. If a file were needed for review or to find out what had transpired in a case, or if a hearing was held and papers were needed by the Court but had not yet been delivered, we would be dispatched to the clerk's office to obtain the file, first by filling out a card and then waiting for the person behind the counter to retrieve the file.

Sometimes the staff would ask us to please "help ourself" if they were busy and the judge needed the file. In fact, sometimes, if there was no one available, we would simply go into the stacks, take out the file, and put in the "request card" as a place holder so someone could re-file it when done. It was a small and well recognized band of lawyers at that time, so no control system was necessary and no one was concerned about papers "disappearing" from a file. We would then hand carry the file to the "courtroom" where the judge would conduct the hearing. There was no security; it was not a concern.

In those early days, Judge Gabriel's courtroom was really just a nicely paneled conference room with a raised box at the head of the table where he would preside. When attending a hearing, the parties would sit on comfortable couches in the outside waiting room and chat with each other or with Judge Gabriel's two secretaries (Jeanne and Mary) before being ushered in to sit at the large oval table. Unfortunately, you could not remain in the room to observe any unrelated matters.

I remember the first hearing I had before Judge Gabriel with amazing clarity. Perhaps it is because I was terrified at the prospect of appearing on the matter at hand, or perhaps it was because when we walked in, the room was much more intimate than a traditional courtroom. It got more disconcerting when it turned out that I was seated in the middle of the table and between two attorneys who were friendly to each other and adversaries of mine. I was trying carefully to conceal my nerves and painstakingly hand-written argument as they chatted with each other, looking me over (not at my notes – though I was leery that was what they were doing) while we waited for Judge Gabriel. He was announced and walked through the door from his chambers and took his seat. He then looked down, surveyed the table, and, without asking any questions, opened the morning with the words, "Ahhh – a rose between two thorns," referring to my presence. With those brief words, Judge Gabriel kindly welcomed me into what at that time was a primarily male dominated area of the law. Though he never showed me any favoritism in his rulings, he was always generous with his time and greatly facilitated my becoming comfortable in a conference room and a courtroom.

So many things have changed about the manner in which we practice law before the Bankruptcy Court. Actual files no longer exist and we have not one but two rounds of security before we walk into beautiful, formal courtrooms. One thing that has not changed, however, is that every judge who has sat during my career has extended a similar welcome, kindness, and concern for new lawyers. I am honored to have been able to devote my practice to this area of law.



DAVID C. PHALEN

WHERE DOES ONE DRAW THE LINE?

Look out at Route 495: it's a bird, it's a plane, no it's the venue-mobile. It was the summer of 1990 and Wilson Phillips was telling us all to "Hold On." That's just what Harry Murphy had in mind as he wheeled that big rig off the exit and into the Ledgemere Shopping Center just over the line. Can an RV in a parking lot be company headquarters? What about that four story brick building sitting in the Eastern Division? Just some of the imponderables that we're all left with from those lazy, hazy, crazy days of summer 25 years ago.





THOMAS J. RAFTERY

THERE'S A ROLE FOR HUMOR

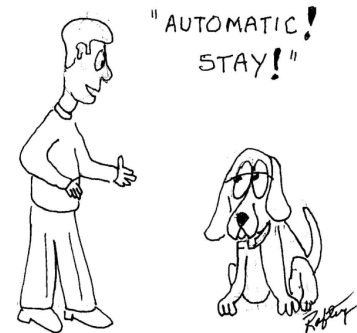
I'M A BANKRUPTCY
LAWYER....I KNOW ALL
ABOUT ADEQUATE PROTECTION!



Why cartoons? I am not sure where it started, but the connection to the law began with doodles in my law school notebooks which wound up replete with doodles. One day several years after law school, unbeknownst to me at the time, a newspaper reporter had been given permission by my wife to cut the doodles from several of the notebooks. The result was a lot of notebooks with pages seemingly attacked by pinking shears. Those doodles were never published because a rival newspaper asked me to do editorial cartoons which have continued to this day. I was given a check for \$5 for the first which I saved and never cashed. I declined payment for any cartoons thereafter. But why draw them at all?

To fill in the gap. Most of us speak at the rate of 125 words per minute. However we have the capacity to understand someone speaking at 400 words per minute. Moreover as I am sure attorneys realize that even at 125 words per minute there tends to be a lot of repetition and surplus thrown into oral delivery. Listening to the average speaker means we are only using 25 percent of our capacity to listen and understand. In other words while it may take a long time to get to the point, the listener may have already gotten there and his or her mind is starting to focus on other things with the remaining 75 percent, the gap. Bench Bar has been held for 25 years. With speeches taking up 2.5 hours at each session, that means there have been approximately 60 hours of oral presentation. That means 45 hours of gap time over 25 years. To fill it I drew cartoons; quite a few actually.

To express the humor in our practice. In all seriousness, there is quite a bit of humor in the Bankruptcy Code and the practice. Not all of it can be described in words which can be limited, but when you draw a picture most can understand it. "Adequate protection" is one of my favorite cartoons. Another favorite is "Automatic Stay." The cartoons tended to reflect the subject of the presentation being given while I was drawing. So the former must have been drawn while someone was expounding on adequate protection, while the latter was obviously done while someone was seriously addressing the perils of the automatic stay. By the way I listened to every word you said.



WHAT BANKRUPTCY LAWYERS
NAME THEIR PETS



STEPHEN P. REYNOLDS A CONGENIAL GROUP

On the occasion of the 25th anniversary of the Boston Bar Association's Bench Bar Program, I have been asked, as a courtroom deputy to Judge Boroff, to share my thoughts. One could say that I received this request because I am an old-timer now with the Court, but I choose to see it as confirmation that my wisdom and knowledge shine through my youthful facade. I first joined the Massachusetts Bankruptcy Court in 1992, and have been part of Judge Boroff's session for the past 22 years. In those 22 years, it has been my pleasure to know and observe the members of the bankruptcy bench and bar for the District of Massachusetts. It's an impressive bunch in many ways. But the most impressive thing to me is the congeniality of the bench and bar. It is a testament to this District's congeniality, professionalism and skill that, under the direction of the Clerk, with the support of judges and cooperation from the bar, access to bankruptcy information and filing has become so much easier for the public. We now have pro se guides on the Court's website; a pro se law clerk; judges and lawyers educating students; website information in multiple languages; pro bono clinics; volunteer lawyer days, as well as multiple committees tasked with making the Court and the bankruptcy bar more responsive, supportive and effective.





JUDGE JOEL B. ROSENTHAL (Ret.)

REFLECTIONS FROM A BANKRUPTCY COMMITTEE CHAIR 1994-1996

My early exposure to the Bankruptcy Committee of the BBA was at the monthly brown bag lunches held in the bowels of 16 Beacon Street. I recall the excellent chocolate chip cookies and how impressed I was that the “senior” members of the bar were willing to share their expertise and insight unselfishly with us “youngsters.” Remember, few organizations were doing Bankruptcy CLE at the time – the American Bankruptcy Institute did not exist!

As years passed, Janet Bostwick twisted my arm and asked me to accept the two year chairmanship (there were no co-chairs or a steering committee then). I remember being concerned about where I could recruit enough speakers for so many luncheons and then being awed by how many volunteered and how many worthy speakers to whom I had to say “no.”

Looking back on those years, my proudest accomplishment was in selecting as my successor a young practitioner who had recently left the U.S. Attorney’s office. The late beloved M. Ellen Carpenter protested vigorously when I pressed her to take the chair as her first official role at the BBA. The rest is history – her presidency of the BBA several years later was extremely successful, and I take some pride in having helped her along the way.

Reflecting back, it has been an honor and privilege to be associated with the Bankruptcy Committee and later the Bankruptcy Section of the BBA and the Bench Meets Bar Program.





ADAM J. RUTTENBERG

MY INTRODUCTION TO BANKRUPTCY SHORTHAND



In 1991 I was a second year associate at a large (by the standards of the time) Boston law firm that no longer exists. I was in the litigation department, but I had several interests, including bankruptcy. One of the litigation partners asked me to work on a matter that had some involvement in the Bankruptcy Court. I can't remember much of anything about the matter, or who my client was, or the motion that we were filing (except that even then I knew the motion was unusual). But I do remember the hearing, my first one in the Bankruptcy Court, before the Honorable Carol J. Kenner.

We got to court, passing through no metal detectors or briefcase screening (it was a different world then). We navigated the din outside the courtrooms on the 11th floor of the O'Neill Building and found courtroom 4. The partner made his argument, along the lines we had reviewed in advance. In the middle of his presentation, Judge Kenner interrupted. Looking straight at us, she said, "But counsel. Don't you have a section 327 problem?"

I had no idea what Judge Kenner was talking about. I am sure the partner didn't either, although he gamely answered, "No your Honor," and tried to keep going. And I suspect everyone in the crowded courtroom, including Judge Kenner, knew that he didn't know what she was talking about. Needless to say, the motion was denied.

I found the experience challenging rather than off-putting. What was this area of law with a complicated statute that provided so many answers (or at least arguments)? Later that year I had the opportunity to go to the FDIC, as the second bankruptcy lawyer in an office that soon contained the "bad" assets of forty failed banks. I wanted to have a variety of bankruptcy cases so I could learn all kinds of different aspects and not be bored. Well, at one point I counted and there were over 300 open bankruptcy cases in which the two bankruptcy lawyers in my office of the FDIC were involved in one way or another. When the gods want to punish us they give us what we ask for.

What I didn't know at the time of that hearing with Judge Kenner, though, was that almost every one of those lawyers watching in the courtroom would have been happy to help a young lawyer understand what Judge Kenner was talking about and how that "section 327 problem" could (or could not) be addressed. The collegiality and generosity of the members of the bankruptcy bar are remarkable. The most opaque of shorthand can get explained to anyone willing to ask a question - even if we speak to each other in Code section numbers.





EDWIN E. SMITH

THE BANKRUPTCY SECTION AND THE UNIFORM STATE LAW PROCESS IN MASSACHUSETTS

I will always be grateful to the Bankruptcy Section for its support for uniform state laws that address commercial and insolvency law issues.

As a Uniform Law Commissioner for Massachusetts, it is my job, and that of my fellow Massachusetts Uniform Law Commissioners, to introduce in Massachusetts uniform state law legislation promulgated by the Uniform Law Commission. Often a particular uniform state law will be relevant to the insolvency bar. Examples include changes to the Uniform Commercial Code and to other commercial laws.

As a fairly new Uniform Law Commissioner a number of years ago, I introduced in Massachusetts the Uniform Fraudulent Transfer Act (UFTA) to replace the Uniform Fraudulent Conveyance Act (UFCA). I spent a good deal of time studying why the UFTA would be better for Massachusetts than the UFCA. But my ultimate test was to bring my analysis before the Bankruptcy Section. There I was, quite nervous, in front of the core insolvency lawyers in the state explaining why I wanted to change a state law with which they were all familiar and under which they had practiced for many years. To my delight, I received a very warm welcome. We had a great discussion, and I walked away with a strong endorsement from the group that helped the passage of the UFTA in Massachusetts.

Since that time, I have relied greatly on the support of the Section for other uniform state laws, especially those dealing with the Uniform Commercial Code. Of particular importance was the support of the Section for the 1999 revisions to Article 9, the 2001 revisions to Article 1, the 2003 revisions to Article 7 and 2010 amendments to Article 9. The legislation passed in 2013, an omnibus bill containing the Article 1 and 7 revisions and 2010 amendments, simply would not have been possible without the strong support of the Section led by Michael Pappone and the Association's Director of Governmental Relations, Kathleen Joyce.

I'll be coming back to the Section for the 2014 amendments to the UFTA and for other uniform state laws in the commercial area. I welcome our dialogue.





JEFFREY D. STERNKLAR
HOW I BECAME A BANKRUPTCY LAWYER

In my mind's eye, I am still a 25 year old kid struggling to get a foothold in a career where I know nothing and everyone around me knows everything. Only when I look in the mirror, and see my father staring back at me, do I realize how much time has passed since I started to practice bankruptcy law. Similar reminders that I am not a kid anymore occur with greater frequency, but no less surprise, with each passing week. Being asked if I could provide reflections on my career is simply the most recent of them.

In the spirit of “humans plan while the Gods laugh” I can say I had absolutely no intention of becoming a bankruptcy lawyer. I thought I wanted to be a trial lawyer. My first job out of law school in 1983 was with a small commercial law firm. I joined the litigation department as an eager first year associate, looking forward to my first appearance in court as a real, bona fide, trial lawyer.

Six months later, having proved to everyone that I was many things, but not a trial lawyer, the head of the litigation department called me into his office. He looked at me and said, “Boy, what do you know about bankruptcy?” I said I never took the course in law school, I knew there was a chapter 11, but I had no idea whether there also were chapters 10 and 12. I said I did not want to have to file personal bankruptcy as a result of our impromptu meeting. I said I had thusly exhausted my knowledge of bankruptcy. The litigation department head beamed with excitement and said, “That’s fantastic. You know more about bankruptcy than any other associate. Go help out the bankruptcy partner,” who was billing in excess of 300 hours a month and was on the verge of a breakdown as a result.

I took Collier home with me that weekend (it was a lot smaller then) and read it from cover to cover. I think I understood about ten percent of what I read. I came to work the following Monday, and was immediately sent to court to handle three hearings. To this day I will never forget the look of befuddlement on the judge’s face when, in arguing my case, I proved only that experience alone would teach me what I needed to know.

What became very clear very quickly, however, is that bankruptcy practice afforded me the opportunity to be the trial lawyer I had aspired to become. The parts of trial practice I found most interesting – arguing the legal and factual points in support of my case – were the parts that bankruptcy courts emphasized. The parts I found less attractive – endless discovery and the inevitable, attendant discovery disputes – were the parts for which the bankruptcy courts and the bankruptcy bar seemed less tolerant. Unlike non-bankruptcy commercial litigation, I was getting into court regularly in bankruptcy cases, where the pressure to keep the case moving and not allow multiple parties to be held up while a two-party dispute was being resolved meant that the hearings were more substantive and decisions more rapid than ever occurred in a non-bankruptcy court on non-bankruptcy cases. As a bonus, bankruptcy practice afforded me the opportunity to work on transactional matters, which I enjoy and would never have had the opportunity to do if I had not become a bankruptcy lawyer.

The collegiality of the bankruptcy bench and bar also proved to be a wonderful surprise. Like practicing in a small town, you ran into the same folks and appeared before the same judges over and over again. Pulling a “fast one” would be suicidal. As Judge Kenner was fond to observe, credibility was like virginity – once you lose it you cannot recover it. The closeness of the bar meant integrity was the only real coin of the realm – you simply could not survive if your word was anything less than your bond. An unintended consequence of always trying to be honest in my dealings with others is that some of my closest friends and most meaningful professional relationships developed with members of the bankruptcy bar, even though I would serve as co-counsel with someone one day and be a zealous adversary with that same person the next.





HERBERT WEINBERG BALANCING LAW AND HUMANITY



Back in the early 80s, I worked as a law clerk for Judge Lavien. Judge Lavien generally sought to apply the law to parties impartially without favor to the attorney who was before him. Judge Lavien worked very hard to stay abreast of the law, assiduously reading the bankruptcy reporter and journals as they came into chambers. A few times he would read the most recent bankruptcy reporter, find a case that was on point and then go into a hearing and innocently query both sides how the case affected their argument, acting as if he fully expected them to be able to respond. Needless to say, both sides could not respond and Judge Lavien then would very gently allow them the time they wanted to review the case.

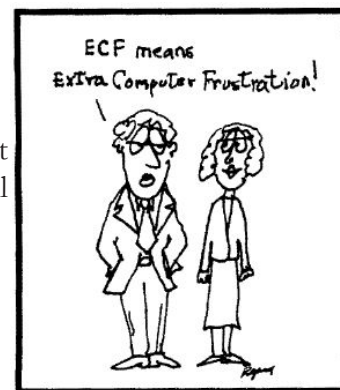
Part of his focus of both training clerks and making sure he was well prepared was to discuss cases with the law clerk before the hearing. One time early in my clerkship we discussed a case where Judge Lavien indicated he was inclined to allow the equities to overrule the overwhelming majority position on the issue. Given his focus on the law, I was surprised and questioned how he could go against the majority. He told me that man and not computer was made a judge so that a judge, especially in bankruptcy, could use his common sense and humanity when it was appropriate to get to the right result. That lesson of focusing on the law while balancing one's humanity and a gentle sense of humor has stayed with me until today.

THE SUBTLETIES OF TECHNOLOGY

Near the inception of ECF, I had received an order from Judge Rosenthal where he found that no answer had been filed and ruled against my client. I filed a motion to reconsider and Judge Rosenthal scheduled a hearing. At the hearing, Judge Rosenthal told me he reviewed the issue and that the ECF system had shown I unquestionably received the pleading. I told him that I had checked my emails carefully before filing the motion to reconsider as well as spoke to my IT person, who assured me my IT was fine and I absolutely never got the email no matter what the ECF system said. Judge Rosenthal agreed to reconsider but admonished me to have my IT reviewed carefully as he would not likely to give me the benefit of the doubt again in light of the overwhelming evidence from the ECF system.

After the hearing, I told my IT person to triple check because I viewed myself very narrowly dodging a bullet. It turned out my spam filter had randomly deleted ECF emails before it got to my inbox so that there was no trace of the email. Because only a few emails were deleted, I did not know it happened. I told my IT person to make sure it could never happen again. Needless to say, it has happened again although not for a few years now.

A few months later, I was at a hearing where another attorney apparently had the same problem but not before Judge Rosenthal. The attorney was not always careful to be scrupulously accurate and would personally attack other attorneys. The judge refused to reconsider.





ANNE J. WHITE

IN THE OLDEN DAYS AND THEN TODAY

In the early 1980s and before, it was common for moving counsel and opposing counsel to be called into the Judge's chambers prior to a hearing. The Judge would say, "So, what's really going on in this case? And can't this really be worked out consensually?" There was typically a frank exchange of arguments and views. Then the matter would be called for hearing in open court, where depending on the particulars of the matter the attorneys would restate their original positions or formulate new positions based on the developments in the in-chamber exchange.

For counsel, there was a sense of two bites at the apple.

In the 1980s and 1990s and before, in any big case, the clerk's office would be swimming with paper. Pleadings, no matter how voluminous, needed to be two-hole punched and placed in a court pleadings binder. For the complex chapter 11, keeping track of the court filings was often a daunting task. For the practitioner, this meant spending considerable time at the clerk's office. Charting the procedural facts of a case and the multiple orders in a case was often as important a service to a client as keeping abreast of the latest trends in bankruptcy law.

Some things are different today. The procedural facts of a case are available through ECF on your desktop computer. The "discussion" with the judge is now conducted only in open court and only at a formal public hearing for which all are invited.

Today, public disclosure is (and should be) paramount. A bankruptcy trustee can sell an individual debtor's asset to his sister, cousin, or aunt (or any other insider) as long as the proper procedures are honored to permit public disclosure and a fair opportunity to object and counter-bid. As unglamorous as it may seem, the importance of comprehensive and accurate service lists of all creditors and interested parties cannot be over-emphasized. Today, the bankruptcy process is a public process. The more public notice, the more public participation, the more public scrutiny, the better the system works. Let the sun shine in.



IN THE COMMUNITY

In addition to its many bankruptcy education programs, including the annual Bankruptcy Bench Meets Bar, monthly luncheons, and frequent seminars on specialized topics of interest in bankruptcy law, the BBA Bankruptcy Section has designed and implemented numerous public service projects that have served the Court, the bankruptcy community, and the public. These projects have greatly improved the practice of bankruptcy law in this district.

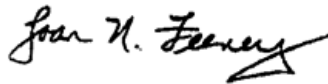
The most compelling example of a public service project initiated by the Bankruptcy Section is its disbarred attorney protocol. It originated in 1994 when an attorney with over 500 cases pending in the eastern division was suddenly disbarred leaving hundreds of clients stranded in a system they did not understand and could not navigate on their own. At the request of the bankruptcy judges, Janet Bostwick, then co-chair the Bankruptcy Section, sprang into action. Janet immediately triaged all of his cases and obtained over 100 volunteers, from firms large and small as well as solo practitioners, to take over the cases pro bono. The Bankruptcy Section trained the volunteers and they assumed all of the cases. For the past twenty years, whenever alerted to a problem of a disciplined attorney with bankruptcy cases, the Bankruptcy Section has volunteered its members to represent the stranded clients on a pro bono basis. Unfortunately this circumstance has occurred a number of times. This pro bono program has now been formalized and a protocol for implementation has been approved by the BBA. It is a tremendous public service to the clients who are stranded in their cases through no fault of their own. In recognition of its pro bono work for this program, the Massachusetts Supreme Judicial Court conferred its John Adams Pro Bono Publico Award on the Bankruptcy Section in 2004.

In the late 1990s, as a result of the practice of certain creditors to demand that debtors enter into reaffirmation agreements, it became clear to the bankruptcy judges that most, if not all, pro se debtors did not understand the consequences of reaffirming debts when they were presented with a reaffirmation agreement by a creditor. Again, at the suggestion of the bankruptcy judges, the Bankruptcy Section established the Reaffirmation Clinic in 2000. For the past 15 years, once a month the Court schedules pro se reaffirmation agreements for hearing and advises the Bankruptcy Section of the date. Before the hearing, the Bankruptcy Section assigns a volunteer lawyer who is assigned to be lawyer of the day for the clinic. The pro se debtors with hearings on that day have an opportunity to meet with the volunteer lawyer and are given legal advice free of charge on whether it is in his or her best interests to continue with the reaffirmation agreement, and the advantages and disadvantages of reaffirmation. Once they receive an explanation of the risks and disadvantages of reaffirmation, most debtors decide not to pursue reaffirmation. The Reaffirmation Clinic has assisted thousands of debtors and is likely to continue as a permanent project.

In 2004, M. Ellen Carpenter became the first bankruptcy lawyer elected as President of the Boston Bar Association. In formulating her agenda as president, Ellen sought to showcase the admirable qualities of bankruptcy lawyers and their volunteerism. She asked me for ideas and I suggested a financial literacy program where bankruptcy judges and lawyers taught high school students about the use of money and credit. She thought it was a great idea and yet another partnership between the Bankruptcy Court and the BBA was born. Ellen appointed a task force of members led by Janet Bostwick and me to study how to design and implement a program, and the BBA Council readily approved the project as a permanent standing committee of the Bankruptcy Section. In 2006, when Ellen passed away, the BBA renamed the program in her honor. Since then, volunteers from the Bankruptcy Section and the Massachusetts bankruptcy judges have educated nearly 5,000 high school students across the district - Greater Boston, Worcester, and Springfield through collaboration with the Hampden County and Hampshire County Bar Associations. The project has been nationally recognized and is a testament to the public service commitment of the BBA, and the Bankruptcy Section in particular.

In addition, the Bankruptcy Section has assisted the Court's Diversity Initiative Task Force, an initiative Judge Henry Boroff established in 2010 to improve the representation of affinity groups in the bankruptcy bar and court. Together the Court and the Bankruptcy Section's Diversity Committee have held several joint meetings and receptions to enhance diversity in bankruptcy practice. Last year, the BBA Diversity and Inclusion Committee established a judicial internship program, through which it recommends law students with diverse backgrounds to work as interns in judges' chambers, including the chambers of bankruptcy judges. This project will assist not only the individual students and judges, but will improve the diversity of the bankruptcy bar.

On the 25th anniversary of the Bankruptcy Bench Meets Bar, it is fitting and appropriate for the bench to recognize these programs of the Bankruptcy Section and to congratulate the Section for its commitment to public service.

A handwritten signature in black ink, reading "Joan N. Feeney". The signature is fluid and cursive, with a prominent flourish at the end.

Hon. Joan N. Feeney, U.S. Bankruptcy Judge





MISSION IMPLEMENTATION: PUBLIC SERVICE PROGRAMS

In January 2009, the BBA adopted the strategic plan for the organization as a whole. As part of the BBA Strategic Plan, the BBA set forth its Mission Statement and Operating Principles as follows:

The Mission of the Boston Bar Association is to advance the highest standards of excellence for the legal profession, to facilitate access to justice, and to serve the community at large. In support of this mission, the Boston Bar Association will strive to:

- *Foster an inclusive community of lawyers by improving the quality of life of lawyers as people, as members of a profession with longstanding values and traditions, and as citizen-lawyers.*
- *Serve individual members and provide them with the tools, relationships, opportunities and resources to develop successful careers and practices.*
- *Serve law firms, in-house law departments, non-profits and public agencies in and closely connected to the legal profession.*
- *Increase access to justice for all, provide for the fair and efficient administration of justice, and enhance the quality of the law.*
- *Ensure that the governance structure, capacity and operations of the BBA are dynamic and suited to the task of accomplishing the Association's goals and objectives without losing long-term focus*

Thereafter, the Bankruptcy Section adopted a Strategic Plan focused on five areas important to the Section and its members and identified goals and strategies in connection with each area. In summary, the Section's Strategic Plan operates to guide the Section in defining and building its "PLACE" in the bankruptcy community, within the BBA, and in member's lives, focusing its attention on the following areas:

- P** Programming
- L** Leadership
- A** Allocation of Resources
- C** Civic Involvement
- E** Encouraging Participation

The Bankruptcy Section strives to implement the Mission of the BBA and the Section's Strategic Plan through the work of its various Committees. These Committees include: Communications; Consumer Bankruptcy; Diversity & Inclusion; Education; Finance; Financial Literacy; Membership; New Lawyers; Practice & Procedure; Public Policy; and Public Service. Highlighted next are some of the notable programs spearheaded by various Committees and supported by the Section.

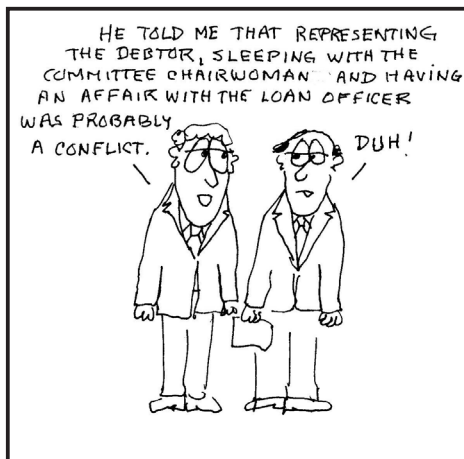
As a result of the Bankruptcy Section's efforts, the Supreme Judicial Court's Standing Committee on Pro Bono Legal Services awarded the Bankruptcy Section the Adams Pro Bono Publico Award due to its long history of pro bono service dating back to its time as a committee under the Business Law Section. The Honorable Joan N. Feeney, wrote a letter listing the Section's many pro bono services, addressed to the Standing Committee which recommended the Section for the award. The award, the first bestowed on any BBA section, was conferred on the entire Bankruptcy Section.



DISBARRED AND SUSPENDED ATTORNEY PROTOCOL

In 1994, an attorney with a large volume of pending consumer cases, especially Chapter 13 bankruptcies, was disbarred. Hundreds of consumers, through no fault of their own, were left without an attorney, a particularly egregious situation for Chapter 13 debtors who typically have paid a fixed fee to receive services over the life of a 5 year plan. The Bankruptcy Court sought assistance from the BBA in helping to ensure advice on a pro bono basis for the individual debtors affected. Janet Bostwick, who at the time was co-chair of the Bankruptcy Committee of the BBA (now Section) acted quickly to establish a procedure for dealing with the crisis. Before long, more than a hundred volunteer lawyers stepped forward to provide pro bono advice.

Unfortunately, the experience of suspended or disbarred attorneys would repeat itself on occasion. Accordingly, the Bankruptcy Section worked with the Bankruptcy Court and the Board of Bar Overseers to develop a written protocol which is now followed in the unfortunate circumstance where a disbarred or suspended attorney is rendered unable to perform legal services. One of the factors motivating the development of the protocol was to ensure the existence of a formal structure to enable the bar to provide pro bono services in an organized way. Critical to operation of the protocol is the willingness of members of the bar to volunteer quickly to provide pro bono services to clients affected by disbarred or suspended attorneys.



DIVERSITY & INCLUSION

As part of its commitment to developing a robust and inclusive bankruptcy community, in 2011 the Bankruptcy Section Steering Committee established a Diversity & Inclusion Working Group to examine the existing state of diversity among bankruptcy practitioners and to recommend ways to support the diversity efforts of the Bankruptcy Court and of the greater legal community.

The findings and recommendations of the Working Group formed a catalyst for a long term plan to enhance the involvement of professionals from diverse racial, ethnic, sexual orientation, and gender backgrounds with the expectation that increased diversity will better serve the delivery of services to underrepresented groups and to the community at large.

The Diversity & Inclusion Working Group began hosting outreach and networking opportunities designed to introduce the wonderful world of bankruptcy law to attorneys from diverse backgrounds and to increase awareness of diversity initiatives within the profession. To further solidify its commitment to diversity and to continue the work started by the Working Group, in 2013, the Bankruptcy Section Steering Committee formally established the Diversity & Inclusion Committee. The Diversity & Inclusion Committee works collaboratively with the United States Bankruptcy Court Diversity Initiative Task Force and BBA Diversity & Inclusion Steering Committee, and continues its efforts to provide opportunities to introduce diverse attorneys to the bankruptcy bar, for members of the BBA to reach underserved populations, to create internship opportunities for diverse law students, and to participate in diversity discussions and training exercises.



FINANCIAL LITERACY

The M. Ellen Carpenter Financial Literacy Program is a joint project of the Boston Bar Association and the United States Bankruptcy Court for the District of Massachusetts. Since 2005, the Program has enlisted volunteer attorneys, judges, and other professionals to teach high school students about credit, personal finance, and smart financial choices, both in the classroom and in a special field trip to the Bankruptcy Court. The Program has operated through the financial support provided by The Charles P. Normandin Fund of the Boston Bar Foundation and The American College of Bankruptcy Foundation, which has enabled the program to grow and expand. The Program operates in Western Massachusetts with the assistance of the Hampden County Bar Association and the Hampshire County Bar Association. The Program recently marked its 10th anniversary. In 2014, 818 students were served through the efforts of 181 volunteers. Students included participants from ten Boston public schools.

The Program was named in honor of M. Ellen Carpenter, a distinguished member of the Section who during her term as president of the Boston Bar Association, helped create the Program in conjunction with the Bankruptcy Court. Ellen, who passed away unexpectedly in 2006, was a Fellow in the American College of Bankruptcy, a former chair of the Massachusetts Board of Bar Overseers, an Adjunct Professor in Consumer Bankruptcy at Southern New England School of Law (now the University of Massachusetts), and a member of the Panel of Chapter 7 Trustees for Massachusetts. She believed in mentoring both new lawyers and high school students and it is entirely fitting that the program she helped create bears her name.



MILITARY / VETERANS ASSISTANCE

In 2009 the Bankruptcy Section, with the support of the Massachusetts Department of Veterans Services, compiled financial education materials and organized a series of financial education seminars that were presented at VFW Posts throughout Massachusetts for military members and their families. The seminars discussed common consumer financial problems including foreclosures, auto loans and credit card debt and highlighting special protections available to members of the military. Section members have also staffed tables at Yellow Ribbon events, providing individual counseling to deploying and returning duty service members. The Section also prepared a Primer that described federal and state insolvency provisions applicable to members of the military and has conducted several seminars, training bankruptcy lawyers on military related insolvency provisions who are now staffing the BBA Lawyer Referral Service Military Panel that is providing pro-bono services to current and former members of the military that are encountering financial hardships.



REAFFIRMATION CLINIC PROGRAM

The Public Service Committee of the Bankruptcy Section also operates a Reaffirmation Clinic Program to assist pro se debtors. If a Chapter 7 individual bankruptcy debtor wishes to reaffirm a debt, the Bankruptcy Code provides a mechanism for a reaffirmation agreement with a lender pursuant to which the debtor agrees to remain personally liable on the loan. If the debtor is not represented by counsel, the Bankruptcy Code requires the court to hold a hearing to determine whether a reaffirmation agreement is not an undue hardship on and is in the best interest of a debtor. The Reaffirmation Clinic provides day-of-hearing volunteer attorneys who meet with these pro se debtors, review their bankruptcy petition, make certain that the debtor understands his obligation under the reaffirmation agreement, and provides the counseling that a debtor's attorney would otherwise provide. These clinics are held monthly at the bankruptcy court, sometimes with as many as five or six debtors in attendance. The Public Service Committee ensures that there are trained volunteers available to staff the clinics.



PRO BONO SERVICES PROGRAM

The Public Service Committee of the Bankruptcy Section coordinates with the Volunteer Lawyers Project of the BBA. VLP administers the allocation of pro bono cases by supervising the intake of clients, conducting a review for eligibility preparing a package for the volunteer lawyers. The Public Service Committee then communicates out to the Bankruptcy Section appropriate volunteer opportunities. The Committee also offers training opportunities to provide lawyers with experience outside of consumer matters with the necessary training to be able to assist consumer debtors.

In addition, the Committee spearheaded an effort to create a solution to a common obstacle in recruiting volunteer lawyers: conflicts. Typically, in a bankruptcy situation an individual debtor might have dozens or more creditors. The Section worked with VLP to develop a process where creditors agree in advance to the waiver of potential conflicts. The waiver program has since been replicated in other jurisdictions. In 2014, the Supreme Court of New Jersey issued a unanimous decision determining that a pro bono attorney could represent a low-income debtor in a no-asset Chapter 7 proceeding even if the attorney's firm represented one or more of the debtor's creditors in unrelated matters. In so ruling, the Court noted that "Advisory ethics committees in New York and Boston have found that pro bono Chapter 7 bankruptcy programs similar to [the New Jersey program] do not give rise to a conflict of interest." Similarly, the Standing Committee on Professional Responsibility and Conduct of the State Bar of California issued a Formal Opinion in 2014, citing to the ethics opinion issued by the BBA, that "If a potential debtor-client is adequately prescreened through a pro bono program like the one in our hypothetical facts to ensure that a simple, no-asset Chapter 7 bankruptcy proceeding is an in rem proceeding that focuses solely on the discharge of debts, a lawyer may represent the debtor-client, without first obtaining written consent, even if the attorney concurrently represents one or more creditors of the debtor-client in unrelated matters, so long as the proceeding remains a simple, no-asset Chapter 7 bankruptcy." The BBA is proud that its leadership on pro bono matters has served as a model recognized by other jurisdictions.





AWARDS

THE SPECIAL ACHIEVEMENT AWARD

The Bankruptcy Section Special Achievement Award is presented to an attorney who:

1. is admitted to practice and is in good standing in Massachusetts;
2. concentrates his or her practice in the area of bankruptcy law;
3. has made an outstanding contribution to the administration of bankruptcy law either through a special project or BBA activities.

The Bankruptcy Section has been proud to bestow the Special Achievement Award upon the following worthy recipients:

2012	Donald R. Lassman
2011	Adam J. Ruttenberg
2006	Guy B. Moss
2002	Christopher Mirick
1998	Janet E. Bostwick



THE NORMANDIN AWARD

Bankruptcy Section Charles P. Normandin Lifetime Achievement Award is presented to an attorney who:

1. is admitted to practice and is in good standing in Massachusetts;
2. has practiced law for 25 years or more;
3. concentrates his or her practice in the area of bankruptcy law; and
4. has made an outstanding contribution throughout his or her career to improving the quality of the practice of bankruptcy law, either through mentoring, pro bono service or BBA activities.



This award is named in honor of Charles P. Normandin. Charlie, who passed away in 2005, was a partner and of counsel at Ropes & Gray and was considered by many to be the “dean” of the bankruptcy bar of Massachusetts. An active member of the Boston Bar Association’s Bankruptcy Section and a fellow of the American College of Bankruptcy, his commitment to professional excellence was matched only by his commitment to community service. He believed in the importance of providing pro bono services to those who are less fortunate and viewed community service as a responsibility of the profession. In addition to the Lifetime Achievement Award which bears his name, the Boston Bar Foundation also maintains the Charles P. Normandin Fund, which issues grants to support bankruptcy related pro bono, public service and civic programs of the Boston Bar Association including the M. Ellen Carpenter Financial Literacy Program.

The Bankruptcy Section has been proud to bestow the Normandin Lifetime Achievement Award upon the following worthy recipients:

2015	Judge William C. Hillman	2006	Richard L. Levine
2014	Daniel M. Glosband	2003	Richard S. Hackel
2010	Judge Joel B. Rosenthal	2002	Alan L. Lefkowitz
2007	M. Ellen Carpenter (posthumously)	1999	Charles P. Normandin
		1998	Joseph Braunstein



OUR TRIP TO SIBERIA

JUDGE WILLIAM C. HILLMAN & M. ELLEN CARPENTER



An excerpt from the Bankruptcy Section's July/August 2006 newsletter featured a special opportunity for bankruptcy section leadership:

Yes, we really did go to Siberia. We were invited to go to Tomsk, a former Gulag city in Siberia, as members of a delegation from the Massachusetts contingent of the Russian American Rule of Law Consortium. (The other members of the delegation for this trip were Associate Justice Robert Cordy of the Supreme Judicial Court and Ben Dunlap, the law clerk to Judge David Mills of the Massachusetts Appeals Court, who spoke about legal ethics to Tomsk's equivalent of the Board of Bar Overseers.) By way of background, Massachusetts sends two delegations each year to Tomsk, its sister city, to teach judges and attorneys about particular areas of the law. The judges in the Arbitrage Court, which is the federal business court with jurisdiction over bankruptcy cases, requested training on American bankruptcy law and so we went with that as our mission.

For two days we met with the four judges on the Arbitrage Court who are responsible for handling the bankruptcy cases, as well as one of the Deputy Chief Judges of the Court, judicial assistants (clerks) and representatives of government agencies and trustee organizations. (Two of these judges, Andrey Solodilev and George Pavlov, will be coming to Boston in September, and we hope to host a reception for them either at the Bankruptcy Court or the BBA.)

The format, which was designed by the Russian judges, provided that they gave us an overview of their law on a particular topic, and we responded. The topics included the historic and current economic underpinnings of bankruptcy; the requirements of reorganization and liquidation type bankruptcies; the investigation and consequences of fraudulent bankruptcies and fraud committed in the course of such proceedings; the roles of the judge and the trustees in the bankruptcy process; and the role and nature of governmental involvement, particularly that of the tax authorities.

We first learned that on average, Russia completely changes its bankruptcy law every three years or so. Even with the most recent changes, there are no consumer bankruptcies in Russia. In fact, outside of Moscow and St. Petersburg, it is difficult to find businesses that will accept credit cards, even from tourists. However, as Judge Hillman noted during our discussions, the billboards that we saw in Moscow touting credit cards are a clear signal that the consumer credit market is moving to Russia, and we expect that at some point the Russian law will be amended to include some form of consumer bankruptcy proceeding. (In fact, after we returned, a report was published that named Moscow the most expensive city in the world in which to live. The condominium market was booming, and we saw a great deal of building going on.)



Another significant difference between the two systems is that over 90% of all bankruptcy cases in Russia are involuntary proceedings filed by creditors, primarily the taxing authorities that do not have the seizure powers possessed by the taxing authorities here. The taxing authorities have priority in the distribution scheme, if there are any assets to be distributed. Since they are not able to seize assets, they file involuntary petitions and expect the trustees to do all of the work often, as discussed below, for no pay.

We heard from both trustees and government officials about their very contentious relationship in virtually every case - the government doesn't think the trustees do enough to liquidate the assets and the trustees don't have any incentive to work hard because in most cases the entire recovery will go to the government. It is a system that needs to be fixed.

The Russian judges wanted to know how we deal with "absent" debtors. After some difficulties with the translation, we figured out that absent debtors are those that just close up shop and leave no assets (or corporate officers) behind. These cases present particular challenges because a trustee is assigned to liquidate the nonexistent assets; however, the trustee has no incentive to work on these cases because he or she will only be paid if the assets are found and liquidated. Thus, these cases remain open on the court's docket forever.

In addition to the formal presentations, we also discussed these topics during coffee breaks and at two dinners. We were attended by two translators during the programs and social events. Additionally, Ben Dunlap, who traveled with us, is also fluent in Russian. Through our informal discussions, we learned that the judges and the trustees were most interested in learning more about the role of trustees in our system, particularly how trustees are compensated, as well as how to improve the relationships between the taxing authorities and trustees. It is a topic we hope to be able to explore further when the two judges from Tomsk visit Boston in September.

The architecture in Tomsk is particularly interesting because of the variety of nationalities that have lived there, depending on who was not in favor and being deported at any given time. We saw some homes that still do not have indoor plumbing, but depend on a pump in the street for water.

Now to answer the most commonly asked questions. Yes, getting there and home took a long time. We flew from Boston to New York to Moscow in 10 hours and then stayed in Moscow for two days before taking the "red eye" to Tomsk on Siberia Air, which took four hours. After four days in Tomsk, we returned to Moscow, again on Siberia Air, for two days before coming home. The return trip from Moscow to New York was again 10 hours – in coach.

It does get cold there. We had reasonably good weather while in Russia, particularly at the end of our stay. Our hosts in Tomsk told us that it hit 62 degrees below zero during the winter, but that since it was "dry cold" it was not too bad. We did not believe them, since the cold off of the Tom River felt pretty wet to us.

They really do offer many toasts during dinner. Restaurants offer lists of vodka like restaurants here offer wine lists. Our hosts were gracious and friendly, and very appreciative of the time we spent with them. We learned a lot about the Russian bankruptcy system and look forward to continuing the discussion.



