December 2007 | Issue II

College Columns

Editor's Perspective

By Grant T. Stein

▲ Grant T. Stein

I take the reins as the new editor of College Columns without quite having known what I agreed to do. As the reflection of the ideals of its founders and measured by the contributions of its carefully selected members, the College is an outstanding organization. College Columns is one of the many communication vehicles we have to try to ensure that our Fellows know what is going on in furtherance of the purposes of the College. In furtherance of that purpose, I would like to request that any member of the College with any issue, idea, information, or subject they consider worth bringing to the attention of the Fellows please take the time to email me at *grant.stein@alston.com* to let me know what you are thinking, or to send an article or report on something that has occurred within your Circuit or Country that you believe merits broader dissemination. I invite, in particular, new Fellows (note I don't say young because no one is chronologically young in this organization) to make the extra effort. I promise that when I reply and ask you to become more involved with College Columns in response to your effort, that I will not twist your arm too tightly. The bottom line, after all, is that the College is a direct reflection of the esteem in which we all hold it and the contribution we make to it through direct participation by attendance at its programs in furtherance of the educational and professional goals to which we

continued on page 2

President's Remarks

By David G. Heiman

▲ David G. Heiman

...If a tree falls in the forest...

If no one reads this column, does it exist? Or, to be less obtuse, is the College adequately reaching its membership? You will see from Dave Sykes' adjacent column that our Chair is giving a lot of attention to this issue. Indeed, it was the subject of much discussion at the College Board meeting in March in Orlando.

Our ranks have now grown to more than 600 from the first class of roughly 50. Naturally, the ability to maintain a close connection among College members has been diluted commensurately. Dave's column is dedicated to his initiative to reverse that trend. Ultimately, though, the extent of your own involvement will be up to you; you may choose to simply call yourself a member of the College and do no more – we're happy if you are.

But, in making that choice, you should be aware of the rewards of becoming more involved. Learn, educate, contribute and enjoy the friendship of colleagues at the top of their practice. It certainly has worked for me. I have had the opportunity this year to work with one of the truly great guys in the profession, Dave Sykes, in each of those pursuits. To me, at least, that's really what it's all about – working together on a common goal with extraordinary people at the top of our profession.

Yes, becoming active is easier said than done. That means that the leadership of the College must work harder to make it easier for you; but you can start by blocking your calendar for March 14 and 15 for the College Annual Meeting in Washington. A full schedule of sessions will be capped on Saturday evening by the Induction Ceremonies for the Fellows' Class of 2008 at the unique National Building Museum. Those ceremonies will include a keynote address by The Honorable Thomas L. Ambro of the U.S. Court

continued on page 3

Chair's Report

By David T. Sykes

▲ David T. Sykes

As chair of the College's Board of Directors, I follow a long line of distinguished prior chairs, each of whom has made a valuable contribution to the strength and longevity of our institution. We have been blessed with foresighted leadership from our chairs, and from many others, since the College's inception. The Distinguished Law Students program, the New Fellows Orientation session, the Best Practices Committee's papers and presentations, the Foundation, the First Circuit's Annual Educational Event, and many other regular programs and features of our College have been born as ideas from our fellows, and developed by groups of fellows into part of our "culture".

One of my goals is to improve communications among College fellows, beginning with upgrading our web site. In this effort, Frank Buckley of Thompson Coburn LLP in St. Louis has been the leader, expending many hours of time and donating his firm's considerable resources in this area. Phil Hendel, of Hendel & Collins in Springfield, MA, chair of the College's Communications Committee, has been at the forefront of this effort. I acknowledge their contributions with much gratitude, especially since I am still learning the basics of computer use and therefore have nothing of substance to contribute to the upgrading effort!

In addition to the web site, communications on other fronts among College fellows, and between the College and the rest of the world, has been the subject of discussion among the leadership and members of the Communications Committee. Suggestions have ranged from instituting additional meetings, to preparing and sending more newsletters. These ideas have great merit--and other ideas would be welcomed.

In considering having additional meetings, the discussion sometimes focuses on the need for more meetings within Circuits;

continued on page 2

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Chair's Report
continued from page 1

some of our Circuits have had exceptional educational and social programs annually or more frequently, but other Circuits seldom meet. All Circuits are encouraged to hold Circuit-wide meetings (in addition to the Circuit luncheons at the Annual Meeting) at least once a year. I would also encourage the International and other fellows to get together at international gatherings such as the annual meetings of INSOL and the International Bar Association. The logistics of planning and producing a third All Fellows meeting (in addition to the NCBJ Luncheon Seminar and the Annual Meeting in Washington, DC) are, at this time, beyond the scope of our existing resources, but the subject is often considered as a means of increasing contact and communications among all fellows.

Additional publications by the College have been considered, either in the form of quarterly editions of College Columns, or regular e-mail newsletters to all fellows. Those of you who have taken a part in producing College Columns know that even publishing one edition a year is a Herculean effort. In considering periodic e-mail newsletters, the content of such newsletters would ultimately be that which we seek to include (with certain limited exceptions, such as brief notices and announcements) in College Columns on a twice-a-year basis, and would therefore likely detract from the value of College Columns. We might be able to have more publications if there are more author-volunteers for subjects which would be of interest to all fellows. If you would like to volunteer to write on such a subject of interest, please contact the College Columns editor, Grant Stein, of Alston & Bird in Atlanta, or the Communications Committee chair, Phil Hendel.

My heartfelt thanks go to our College President, David Heiman, who because of my personal circumstances in 2007, has had to take on far more work and responsibility than he expected when he began his term, and has done so with his customary skill and dedication.

Editor's Perspective
continued from page 1

all aspire, and for which we have all been recognized through our membership.

One of the thoughtful and outstanding undertakings by the College was the establishment of the Memorial Committee to recognize the important contributions and personalities of leaders in the bankruptcy and insolvency practice whose careers preceded the establishment of the College. Their history and legacy is of extraordinary value and the comments from the presenters of the most recent Memorial Recognition made at the All Fellows Luncheon at the NCBJ on October 10, 2007, is re-presented in this edition of College Columns. I hope everyone takes the time to read (or reconsider if you were at the October All Fellows Luncheon) the excellent comments by Richard Toder, Harvey Miller and Jerry Smith.

AMERICAN COLLEGE OF BANKRUPTCY
MCMXC

College Endowment

By Joel B. Piassick

Holiday greetings and a huge THANK YOU from the Foundation Board. The American College of Bankruptcy Foundation continues to receive a wonderful level of support from the College and its Fellows. As you know, the Foundation was formed as a 501(c)(3) entity in order to allow Fellows to make tax deductible contributions that would support pro bono and educational activities focused on the insolvency area. Through November, the capital of the Foundation had reached $600,000 and it has awarded and made future commitments of over $170,000 in grants, since its inception, the most significant portions being focused on pro bono activities and on supporting and making more accessible the Bankruptcy Archives at the University of Pennsylvania Law School.

This year, the Foundation has completed its first of two $25,000 contributions in memory of Leon Forman that will help finance, along with matching contributions from Blank Rome, LLP, the digitization of the Bankruptcy Archives. It has also committed $10,000 to the International Bankruptcy Law course that will be taught at NYU law school with simultaneous classes electronically presented at the Georgetown, Tulane and University of Utah law schools, and perhaps others.

We are in the midst of our year-end campaign and ask each Fellow of the College to consider a year-end contribution to the Foundation.

International Law Update

By E. Bruce Leonard

▲ E. Bruce Leonard

There are several important items to mention on the international front.

The class that will be taught by Professor David Epstein and other College Fellows at New York University on international insolvency law will begin January 2008. It will be simulcast through an internet link to law students at Georgetown University, Tulane University, and The University of Utah. The faculty willl include College Fellows Don Bernstein, Richard Broude, Dan Glosband, Lewis Kruger, and Ralph Mabey.

The College also anticipates participating in an event to be held in Europe during the coming year. It is to be a planned Colloquium on the successful completion of the *Eurotunnel* reorganization, the largest and most complex European restructuring in decades. The Colloquium is tentatively scheduled to be held in Paris during the spring of 2008. Details will be forthcoming.

The College has partnered with the International Insolvency Institute ("III") on a precedent-setting study of the origins, development and future of coordination and cooperation among administrations in multinational reorganizations and liquidations. A work on this scale on this topic has never before been attempted and we are particularly pleased and proud to have two of the foremost authorities in the world developing the project.

The authors are Hon. Bruce A. Markell of the Bankruptcy Court for the District of Nevada and Professor Bob Wessels of Leiden University in Amsterdam. Judge Markell and Professor Wessels are both Fellows of the College and Members of the III and each has an enormous reputation for the excellence of their analysis and commentary. The proposed work, tentatively entitled "Origins and Developments of International Cooperation in Bankruptcy Matters", is in its final phases and completion is scheduled for mid-2008.

The work will deal with the origins of cooperation in international cases from earliest times when there *was* no cooperation in international cases and the Grab Rule reigned supreme. From those minimalist beginnings, the work will trace the development, largely through the leadership of insolvency profession and associations like the College and the III, through the origin and development of such measures as Cross-Border Insolvency Protocols, the American Law Institute's *Guidelines for Court-to-Court Communications in Cross-Border Cases* and, ultimately, the development of the UNCITRAL *Model Law on Cross-Border Insolvency* which has become Chapter 15 of the Bankruptcy Code and has been adopted in 11 other countries including England, Japan, Mexico and is in process of being adopted in several others.

The book does not dwell on an academic focus on the important issues in international insolvency and concentrates on the issues and areas that are of critical importance to professionals in the insolvency area who work on cross-border cases and to investors and creditors to whom a stable and predictable set of rules for international insolvency cases is exceptionally important. There will be a report on the status of the project at the College's Annual Induction Ceremonies in Washington in March and we hope that one or both of our distinguished co-authors will be able to attend to describe the project and answer questions on the issues and controversies that it deals with.

This will be a unique world-leading project. It was modelled on the example of the monumental work being undertaken by Professor Kenneth Klee on the treatment of bankruptcy cases by the Supreme Court. It will be published by Oxford University Press, one of the foremost legal publishers in the world.

President's Remarks

continued from page 1

of Appeals for the Third Circuit, also a Fellow of the College. A reception will follow. The weekend will also include panels by well-known experts on timely issues, and there will be a host of other meetings, including meetings of each of the Circuits. Your ideas on how to make the weekend more meaningful are welcome.

In the meantime, we will stay focused on bringing the College closer to you.

I want to mention two developments that are especially noteworthy. First is the commitment by Lexis/Nexis to publish the outstanding papers prepared by the Best Practices Committee, including a Circuit-by-Circuit Review of case law on commonly-encountered Chapter 11 issues. This is the first time the College has had its work published and available outside of our own membership. Watch for more information so that you can order the publication. Second is a new International Insolvency Law course sponsored by the College. It will be taught by Professor David Epstein at NYU, beginning in January, and broadcast live at multiple locations. It is our hope to record the course and make it available to members of the College.

Although, as of this writing, the 2008 Patrons and Sponsors solicitation is not complete, your response has been fantastic. We expect to exceed last year's record-setting level of contribution. Many thanks for your generous support!

AIRA Lifetime Achievement Award for Charles C. Crumley

On October 17, 2007, Charles C. Crumley received the Association of Insolvency and Restructuring Advisor's (AIRA) *Lifetime Achievement Award* at a fully subscribed dinner with over 180 attendees at the Cherokee Town Club in Atlanta, Georgia. Charles was a member of the very first class of the College. His award was presented by The Hon. Paul W. Bonapfel, United States Bankruptcy Judge for the Northern District of Georgia. Charles is a graduate from the Ohio State University and the Harvard School of Business´ Advanced Management Program. He has been a CPA for over 50 years. After a long career with Arthur Young, he began an insolvency and restructuring practice shortly after the enactment of the Bankruptcy Reform Act of 1978 which continues today. He has held the AIRA´s CIRA designation as a Certified Insolvency and Restructuring Advisor for over 15 years. He has served in innumerable cases as financial consultant, disbursing agent, Trustee, Examiner, and expert witness throughout his career.

From left to right, Robert E. Hicks, William G. Hays, Charles C. Crumley, and Hon. Paul W. Bonapfel.

Memorial Committee – Professor Charles Seligson – Oct. 2007

Excerpts from combined comments by Richard S. Toder, Harvey R. Miller, and Gerald K. Smith

Comments by Richard S. Toder

▲ Richard S. Toder

The Memorial Committee was established by the Board in recognition that as the years go by and new and younger fellows become an ever larger portion of the College, there is a greater and greater risk (indeed, likelihood) that an important part of our bankruptcy history and the larger-than-life figures of the past, who gave so much to our profession, will recede from the collective memory of the College. This was felt by the Board to be a great pity and while we can't undo the past, we can at least celebrate our past leaders.

It was in that spirit that the Committee consisting of Ralph Mabey, Harvey Miller, Len Rosen, Ray Shapiro, Jerry Smith and me, were unanimous in their selection of Professor Charles Seligson. Harvey Miller and Jerry Smith will speak in a few minutes on the years spent with the Professor.

For my part, I will give the barebones of Professor Seligson's past and then having spoken with Len Rosen, who also worked extensively with Professor Seligson from 1956-1965, while both were at Seligson & Morris, recount his sense of Charles Seligson.

Charles Seligson was born in North Carolina in 1901. He was admitted to the bar in North Carolina in 1921 – which made him an attorney at the tender age of 20! – having never gone to law school or even to College. Subsequently he did go to NYU where he obtained a BS and LLB!).

He was a Professor of Law at Rutgers for 10 years and then for 29 more years at NYU – where he lectured in 5 different courses. But make no mistake, he was not just an academic –but a Practicing Attorney – Douglas, maybe I phrased that poorly. For many years, he practiced law with Seligson & Morris as a senior partner, and in 1969 moved to Weil, Gotshal & Manges along with a young, callow, unknown attorney named Miller.

He wrote and lectured widely, was a member of the National Commission on the Bankruptcy Laws in the 1970's (which culminated in our Bankruptcy Code), a member of the advisory committee on the Bankruptcy Rules of the US Judicial Conference, was a leading contributor to Collier's (co-author of 4 volumes, of the 14th ed.), and Chairman and long-term member of the NBC.

Professor Seligson passed away in 1975 at the age of 74. These then, are a few dry facts concerning the man universally known as "The Professor". But what about the man himself – the person behind the achievements?

Comments by Harvey R. Miller

▲ Harvey R. Miller

During the course of your life, if you are lucky, you will meet one or more persons who makes an indelible impression upon you. For me, Charles Seligson was one of those persons. I was lucky to meet him at the start of my legal career. As a first-year associate, in odd circumstances, he was my adversary in a contested matter under the Bankruptcy Act of 1898, as amended. Although I was right, he gave me a whipping.

But, I must have done something right, because he offered me a temporary job. I took it. It never became permanent. Even when I became a partner four years later, he told me it would not be a good idea to make any long-term capital commitments.

Professor Charles Seligson was very proud of being a distinguished professor. He loved being referred to as "the Professor." Some of the associates at Weil Gotshal thought Professor was his first name! He was one of the kindest, considerate, intellectually gifted persons I have ever known. We worked intensely together from 1963 until his death in September, 1975.

So, who was Professor Charles Seligson? He was a courtly North Carolinian, born in Raleigh on January 10, 1901. He came to the Big Apple after passing the North Carolina bar, and graduated from NYU in 1928 with a B.S. degree and obtained his LL.B in 1929.

He was a full-time practitioner; a full-time teacher; a renowned author, lecturer and leader of the Bar. When he was engaged in a project, he was intense and hours meant nothing. The first day I worked for the Professor, I put in 22 straight hours, showered and met him in court with the necessary analytical report.

He commenced his teaching career in 1938, as a member of the faculty of Rutgers University School of Law, and its predecessor, the School of Law of the University of Newark. From 1948 to his death, he was a member of the faculty of NYU School of Law. He taught courses in creditors' rights, bankruptcy, federal jurisdiction and federal practice.

He was a founder of the firm of Seligson, Morris & Neuberger, which subsequently became known as Seligson & Morris. He was a prolific writer and co-author of four volumes of the 14th edition of Collier on Bankruptcy, the edition which explicated the Chandler Act of 1938, which, essentially, created our modern bankruptcy law.

He wrote numerous and extensive Law Review articles and was frequently cited by the United States Supreme Court and other courts. I was always amazed when sitting in his office and the phone would ring and a judge would ask the Professor to explain a fine point of law.

He was a great mentor. He mentored Larry King, Marty Lipton, Len Rosen, George Katz, Herb Wachtel, myself and countless others. He was always considerate and made time to talk with you, engage, explore issues and even accepting an idea from a junior, even though it might have conflicted with his original thoughts.

He served as a receiver and a trustee in numerous bankruptcy cases, as well as a chapter X reorganization trustee and as the attorney for receivers, trustees, creditors' committees and debtors in possession.

Nothing was beyond his ken or ability. Late in his career, he was called at the last minute to replace Roy Cohn of Senator McCarthy fame, as the plaintiff's attorney in a New York State Supreme Court action to invalidate a Mexican divorce. He won the case at the trial level and Cohn lost it at the appellate level.

In 1970, he was one of three presidential appointees to the nine member Commission on the Bankruptcy Laws of the Untied States. He was the only practicing attorney appointed to the Commission. The Commission was established by Congress to study and recommend improvement of the bankruptcy laws of the United States. He testified at length before the respective committees of Congress concerning proposed bankruptcy bills that evolved out of the Commission's report of 1973 that eventuated into the Bankruptcy Reform Act of 1978.

From 1960 to his death, Professor Seligson served by appointment from the Chief Justice of the United States as a member of the Advisory Committee on Bankruptcy Rules for the Judicial Conference of the United States.

He was a founding member of the National Bankruptcy Conference and served as its Chairman during the critical years of bankruptcy reform.

On September 17, 1975, on the floor of the House of Representatives, a few days after Professor Seligson's death, Congressman Don Edwards of California, who had been an instrumental member of the Bankruptcy Commission of 1970, noted the passing of Charles Seligson and said of him:

"This quiet-spoken, well-mannered gentleman was a legal giant."

Truer words were never said.

Thank you.

Comments by Gerald K. Smith

▲ Gerald K. Smith

Towards the end of the 1960s, Professor Seligson asked me if I would be interested in becoming a Conferee of the National Bankruptcy Conference. I was not too sure what that entailed or its importance, but I told him I was interested. He suggested that I personally meet with a member of the Membership Committee. I met with Referee Asa Herzog of the Southern District of New York, a member of the Membership Committee. Shortly thereafter I was nominated for membership by Professor Loiseaux. My nomination was seconded by Professor Seligson and I became a member in 1970. Not long thereafter I was contacted by Professor Seligson to see if I was interested in becoming counsel for the recently created National Committee on Consumer Finance. He said his good friend Ira Milstein was the Chair. I said I would be and he tried to make it happen. I was unsuccessful.

In July of 1970, Congress created the Commission on the Bankruptcy Laws of the United States and President Nixon appointed Professor Seligson as one of the members of the Commission. Professor Seligson asked me if I would be interested in working for the Commission. He added that if I were, I should talk to the Executive Director, Professor Frank Kennedy, and the Chairman, Harold Marsh, at the California Financial Lawyers Conference. I did so. We discussed the status of the Commission and how I would fit in. I returned to Phoenix and persuaded my wife and partners that I should terminate my relationship with the firm, move to Washington, D.C. for a year or so, and devote my energies to the work of the Commission. Although I had some doubts, and certainly the partner who was responsible for my being at Lewis and Roca, John P. Frank, had doubts, I persisted. It turned out to be a very rewarding experience. I will always be grateful to Professor Seligson for his considerable effort in trying to make something out of a young student from Kansas.

Professor Seligson was a remarkable teacher. He greatly enjoyed explaining difficult subjects and very much enjoyed teaching. Although I did not have the good fortune of seeing him in the role of a lawyer, I followed his career closely and witnessed first hand his impact on what became our Bankruptcy Law in 1978. No Commissioner knew as much or contributed more, especially as to the role of a private trustee or the dynamics of arrangements and reorganizations.

The American College of Bankruptcy Foundation Wishes to Express Its Deep Appreciation to the Following January-November 2007 Contributors

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Total of $50,062 has been received to date from 108 members. *11/29/07*

Book Review

Meet you in Hell Andrew Carnegie, Henry Clay Frick and the Bitter Partnership That Transformed America

By Les Standiford,
Three Rivers Press 2005, 310 p.
Reviewed by Robert G. Sable


▲ Robert G. Sable

This book describes two of the transforming events in America's economic life, the Homestead Strike and the evolution of Carnegie Steel Company into United States Steel Corporation. Les Standiford frames the events and clash of wills of Carnegie and Frick in the moral framework of Weber's analysis of the Protestant ethic which some believe gave moral self justification to those captains of industry.

This book views the Homestead Strike through the prism of the personalities and values of two titans of that era, Carnegie and Frick. Did Carnegie, the older, wealthier and more visible, hold the higher moral ground? Standiford declares no winner. Carnegie and Frick's basic economic principals were not driven by marketing or sales quota, but cost control. The easiest way to cut costs was by keeping wages low and working hours long.

By the mid 1880's Andrew Carnegie had built the largest integrated steel company in the United States. That vertical integration required an assured source of coke as a key ingredient. Henry Clay Frick was an essential addition to the Carnegie Steel empire because the H.C. Frick Coke Company controlled large coke making facilities. Carnegie acquired the majority interest in the Frick Coke Company. Carnegie quickly came to the conclusion that Frick was a "genius" and the "Man" and designated Frick as the president of Carnegie Steel.

Standiford describes the cataclysmic confrontation with members of the Amalgamated Association of Iron and Steel Workers (AAISW) and some 300 Pinkerton Agents mobilized by Frick resulting in 35 fatalities and hundreds of wounded. After this war the union forced the Pinkertons to surrender and subsequently withdraw. The victory was short lived as the National Guard arrived, took control of the Homestead plant and expelled the union members. The AAISW won the battle of Homestead, but Frick's legacy was total victory in the labor management war. The defeat for labor was so devastating that there was no union in an American steel plant for over 40 years until 1937.

Both men believed that unions were antithetical to profits, but Frick's approach was to confront and defeat the union at every turn while Carnegie favored tactic was simply to close the facility and wait until the workers had no choice but to return to work on management terms. During the Homestead Strike, Carnegie was on an extended vacation in Scotland but was kept abreast by cable of all events in Homestead and was privately supportive of Frick's inflexible approach. For the rest of his life Carnegie lamented the loss of life at the Homestead Strike, even though he reaped the benefits of that tragic event. The singular event of the Homestead Strike turned a highly profitable and symbiotic relationship into a series of disagreements which only concluded with the sale of Carnegie Steel to the J.P. Morgan creation, United States Steel Corporation for $480 million dollars, approximately $329 billion dollars in 2006 dollars.

That final transaction occurred only after Carnegie's attempt to impose the terms of the Iron Clad Agreement on Frick. The Iron Clad Agreement required any shareholder of Carnegie Steel to sell his stock back to the Company at book value if so requested by the holders of 75% of the outstanding stock Carnegie owned 45% of the stock. Carnegie demanded that Frick tender his stock which would have resulted in Frick being paid approximately $1.5 million dollars. A settlement was reached and less than three years later when Carnegie Steel was sold to United States Steel Corporation, Frick was paid $51 million dollars.

These events occurred in pre Bankruptcy Code and pre National Labor Relations Act world where the battle between capital and labor was literally a street fight. Both the evolution of labor law and bankruptcy law have created forums where the rights of both sides are balanced within a framework which allows economic warfare, but encourages negotiated peace. The very existence of Section 1113 and 1114 of the Bankruptcy Code precludes even the thought of a Homestead Strike. The structured balance of the Bankruptcy Code creates an honorable forum for today's confrontations.

Carnegie apparently had some superficial guilt feelings, but Frick evidenced no introspection or doubt except in the incident which gives this book its title. Near the end of his life, when after decades of acrimony, Carnegie suggested that Frick and he meet and reconcile, Frick replied "Tell Mr. Carnegie I'll meet with him. I'll meet him in Hell where we both are going."

Standiford's analysis has a populist perspective and sometimes strays from the focus on the Carnegie/Frick relationship in an attempt to provide a historic framework. The events and personalities are so strong that the reader easily becomes engulfed in the story itself rather than its meaning.

Although Standiford recounts the literal legacy of both men, three thousand Carnegie Librarys, of which one thousand still exist, TIAA and even Education Testing Services, all funded by Carnegie as well as many museums and parks which are the legacies of both men, it would have been even more helpful if the author had dug deeper into the psychological and maybe even spiritual feeling which almost compelled these giants to build empires, mansions and ultimately the grandest symbols of ostentation. Was it the Protestant ethic, old fashioned greed or simply that one success inspires the hunger for more success? This book certainly asks the questions and provides at least the basis for some answers.

Acknowledgements

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