



## 2009 Induction Ceremony and Events The College Returns to the Supreme Court

By Shari Bedker, Executive Director



▲ Officers of the College enjoy the ceremonies at the Induction of Class 19, March 15, 2008.

Join us March 27–28, 2009, in Washington, D.C., as we welcome the twentieth class of Fellows into the college. The Induction Ceremony will be held in the Great Hall of the U.S. Supreme Court on Friday, March 27. You can view the complete schedule of events on our website at [www.amercolbankruptcy.org](http://www.amercolbankruptcy.org). Some of the highlights include the following.

### Induction Keynote Speaker Dennis W. Archer



▲ Dennis W. Archer  
This year's keynote speaker is Dennis W. Archer of Dickinson Wright PLLC, Detroit. Archer is a former Detroit mayor and Michigan Supreme Court justice, and past president of the American Bar Association, the first person of color elected to that organization's highest office.

Archer has achieved national, state, and municipal leadership positions despite humble beginnings.

In 1985, Michigan governor James Blanchard appointed Archer an associate justice to that state's Supreme Court. He was elected to an eight-year term the following year. In his final year on the bench,

Archer was named the most respected judge in Michigan by *Michigan Lawyers Weekly*.

Archer then served two four-year terms as mayor of the city of Detroit (1994–2001) and was president of the National League of Cities in 2001. After leaving the mayor's office, Archer was elected chair of Dickinson Wright PLLC, a 200-person Detroit-based law firm with offices in Michigan and Washington, D.C. He sits on the corporate boards of Johnson Controls Inc., Compuware Corporation and Covisint, and North Carolina Mutual Life Insurance Company.

### New in 2009, About Town Dining

On Friday night after the Induction Ceremony, for the first time, we are going to have About Town Dining. The college has made reservations at 20 different restaurants within in walking distance of or a five-minute cab ride from the Mayflower Hotel at 8:45 p.m. for groups of 16. We will send out the list of restaurants with cuisine and price to all Fellows in December and January. If you would like to participate, when you arrive at the Mayflower on Friday, go to the Concierge Desk and tell them you are with the American College of Bankruptcy and want to sign up for About Town Dining. Under the restaurant you would like to attend, write down your

name and the names of your guests. You will be able to see who is already signed up at the various restaurants so you can meet up with old friends or meet new friends. Then, just show up at the restaurant you have selected at 8:45 p.m.

### Hospitality Room

Another new feature for attendees and guests is a hospitality room with light refreshments. The room will be available at the Mayflower Hotel in the New Jersey Room on Thursday, March 26, from 6 to 9 p.m. for those Fellows who come in on Thursday and would like to meet up with other Fellows before heading out for cocktails or dinner that evening on your own.

### Educational Panels

On Saturday, March 28, during the Educational Panels, in addition to excellent discussions on current topics, we will hear from Professor Ken Klee, author of *Bankruptcy and the Supreme Court*. Professor Klee's book has more than 500 pages of history and anecdotes, and involved years of meticulous and interesting research. The college's sponsorship of the book is just one of the many important projects the college and the American College of Bankruptcy Foundation support each year. In early 2009, all Fellows

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**Chair's Report**

By David G. Heiman

*We cannot direct the wind,  
but we can adjust the sails.*



▲ David G. Heiman Most of us have been through three or four recessions in our professional lives. While no one likes to see economic downturns and the resulting havoc wreaked on businesses and individuals, we, as restructuring professionals, look at approaching downturns as our time to spring into action. We have done so with pride that we can make a positive impact. We also have done so with the comfort and knowledge that economic cycles come and go, that the down cycle will reverse itself and normalcy will return. This time it's different. Yes, we are now in the middle of dealing with the current turmoil and so take pride in our ability to make an impact. We know that there will be a recovery. But this time, we just don't know when. This time there appears to be no safe havens. Millions of lives have been turned upside down, with little hope for near term relief.

So what does that mean for us, the experts in the eye of the storm? Of course, we cannot change the direction of the wind, but we can help to ride out the storm. If ever the mission of the College had relevance, it is now. As the leaders of the profession, we can apply our talents with a level of dedication and sensitivity that will allow the profession to rise to the highest level that is befitting and necessary in these troubled times.

I hope to see all of you in Washington for our Annual Meeting on March 27-28. Based on the crises of the past few months and expectations for the next few, there will be much to talk about! As usual, the Induction Ceremony and reception will be the highlight, especially as we return to the Supreme Court for the festivities. Don't miss our keynote speaker, Dennis Archer, Past President of the American Bar Association and former Mayor of Detroit and Justice of the Michigan Supreme Court. Watching his career path and great accomplishments has been motivational to me. I am sure you will enjoy his remarks. ☰

**President's Remarks**

By Paul M. Singer



▲ Paul M. Singer I am sure you have heard many times over recent weeks from colleagues in other practice areas how busy bankruptcy professionals must be in light of the financial meltdown. Indeed, it is true for many of us. But for many others in our society this truly is a time of personal crisis. The College's response has been both collective and individual. The College's Pro Bono Committee, under Michael Cook's extraordinary effective leadership, has provided assistance to projects around the country, literally from New York to San Francisco and Los Angeles and from New Hampshire and Vermont to South Carolina, with places in between, including South Dakota and Illinois. In addition, many College Fellows, perhaps now busier than ever, have volunteered for service at the local level. Most of us have never experienced anything like our country is going through. That is why we are proposing to significantly increase the College's Pro Bono commitment for 2009. But just budgeting the money does not result in the delivery to the appropriate need. That is where the College's Fellows come in. An easy way to do your part is to help secure a College grant for your community's pro bono effort. The College's Pro Bono grant form, which is accessible on the College's website, is quite easy to complete. There are any number of worthwhile projects that could use our help. By taking a couple of minutes to fill out the form and submitting to Michael Cook, you can help the less fortunate in your community.

On a lighter note, we have recently begun a process to expand the College's educational outreach program. Under Sally Neely's effective leadership, the Educational Committee is hard at work at looking at ways to develop high level programs of general interest that could be used by Fellows to create similar programs in their own Circuit. The First Circuit College-sponsored program has been a terrific success and is the model. But other Circuits are right behind. And, of course, there is David Epstein's International Law Program that is simulcast live to several law schools. This lecture series is of such high quality that a number of

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## Editor's Perspective

By Grant T. Stein



▲ Grant T. Stein

From generation to generation. These are words we have all heard and are familiar with, though not necessarily in our professional lives. In this issue the significance of this phrase to the College is front and center in many ways.

There are four articles in this edition of College Columns that reflect the duty we have to mentor and to teach future generations of bankruptcy practitioners. The first is the excellent report from Kaaren Thomas on the Distinguished Law Students program: where they are, what they are doing, and the impact of the College on them already in their young careers. We also have three articles that contain a partial history of a true giant of the insolvency bar, Peter F. Coogan, who passed away in 1985, before the College was created.

The authors of the three articles about Professor Coogan reflect the extraordinary influence and impact he had on bankruptcy law and practice. I recommend that the readers of this issue carefully review the perspectives on Professor Coogan of Professor Julian B. McDonnell, the John A. Sibley Professor of Corporate and Business Law, Emeritus, of the University of Georgia School of Law, and from Fellows Professor Charles W. Mooney, Jr., the Charles A. Heimbold, Jr. Professor of Law at the University of Pennsylvania, and William F. McCarthy of Ropes & Gray, LLP in Boston, where Professor Coogan practiced law when he was not teaching Law at Harvard, Yale, Virginia, Duke, Georgia, Southern California and Houston. These three superior intellects and influences on the practice and theory of Insolvency law reflect three different periods in Professor Coogan's professional life – the practice of law, his teaching before his retirement, and his teaching after his retirement and until his death.

Those who came in contact with Professor Coogan were enriched. I would be less than candid if I did not note that I had the good fortune of being taught by Professor Coogan at the University of Georgia in the fall of 1979, just prior to the effective date of the Bankruptcy Reform Act of 1978. His Reorganization class before there were any cases interpreting the new Code, was a special time to be a law student. He was directly involved with so many aspects of the creating and drafting of what was then the new law, that the insights he provided

set a foundation for many of us in his class who have continued in this area.

I hope you enjoy reading the remembrances of Professor Coogan. I did and I want to thank Professor McDonnell, Professor Mooney, and Bill McCarthy for taking the time to tell part of an important story. I also want to thank the Memorial Committee for providing the impetus for the College to present the histories of Professor Coogan, Professor Charles Seligson and others on whose shoulders our current bankruptcy bar stands in so many ways. Besides being great history, the work of the Memorial Committee reminds us all so clearly of our obligation as Fellows to help ensure that what we do is done the right way, and that the art and professionalism of our predecessors is handed down to the next generation. 🏛️

## President's Remarks

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Fellows have signed up to audit the program. We are exploring ways to expand the number of law schools that participate in that program. Again, let us know if you or a law school with which you are associated is interested in joining this program.

Finally, as part of our attempt to foster collegiality, we are working on a protocol to help subsidize the attendance of judges and academics as well as foreign judges at our Annual Meeting in Washington, DC. It is our hope that this effort will allow for more interaction among those in the different parts of our profession. All Fellows in the College make an important contribution to the profession, whether it be training those who will follow us, judging our cases, or providing legal and financial advice to corporations and individuals. We intend to make it easier for all of us to interact to create a more dynamic professional experience. 🏛️



## Pro Bono Committee: Doing Good

By Michael L. Cook

*Pro Bono Committee Chair*



▲ Michael L. Cook

The Pro Bono Committee has been working for the public good this past year. It not only funded worthwhile projects, but also promoted and encouraged new pro bono projects in four locations around the country.

## Criteria for Grants

The college and the foundation support existing or newly formed bankruptcy consumer debtor programs or projects that counsel or deliver legal services to indigent consumer debtors. The committee favors grants to organizations with educational programs for indigent consumer debtors and attorneys who provide pro bono indigent consumer legal advice. Facilitating the delivery of effective volunteer bankruptcy legal services to indigent debtors is an essential goal of the college's pro bono effort. A grant applicant should show in its request that its services are free of charge and generally available to indigent consumer debtors.

## Grants to Existing Pro Bono Projects

The committee approved eleven of sixteen grant requests during the first ten months of 2008, using all the funds provided by the college and the foundation for the year. The committee rejected requests made by fee-charging credit counseling and other service providers.

## Approved Grant Requests

Summarized below are projects representative of those approved by the committee in 2008.

**Consumer Bankruptcy Assistance Project (Philadelphia).** Provides pro bono Chapter 7 debtor representation; pro bono volunteer training; ongoing access to project resources (computers, software, and training materials); free educational seminars on debt counseling and bankruptcy; and expanded bankruptcy-related service to Spanish-speaking debtors. The grant funds continuing bankruptcy services for Spanish-speaking clients to be served by one paralegal and volunteer lawyers.

**NH Pro Bono Referral Program.**

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## International Bankruptcy Law Course

By Professor David G. Epstein




▲ David G. Epstein

The American College of Bankruptcy, the American College of Bankruptcy Foundation, and the International Insolvency Institute are again providing an International Bankruptcy course for law schools. More and more businesses have subsidiaries or operating facilities in more than one country, and more and more businesses have debt holders in more than one country. While practitioners are and will be increasingly encountering international bankruptcy issues, few law schools have a faculty member qualified to teach a course on international bankruptcy, and no law school can allocate to a course on international bankruptcy the kind of resources needed to bring in guest lecturers from around the world.

Most of the teaching will be done by six American College of Bankruptcy members: Don Bernstein, Richard Broude, Dan Glosband, Judge Allan Gropper, Lewis Kruger, and Ralph Mabey. They will be joined by leading bankruptcy practitioners and professors from around the world. Professor Ted Janger will attend all classes.

For each class, the teachers of that class will prepare materials and post those materials on TWEN (the West Educational Network). West is making available a special TWENsite that can be accessed by students taking the course, the faculty, and college members (see below).

This year, Berkeley, Brooklyn, Emory, Fordham, New York University, Penn, Tulane, and Utah are participating in the International Bankruptcy course. All the classes will be taught at New York University. Students enrolled through other schools will be able to participate fully using technology provided by Kaplan Educational Group.

Any college member can access the course materials and the completed classes at any time by contacting Shari Bedker at [sbedker@amercol.org](mailto:sbedker@amercol.org) before **Wednesday, January 9, 2009**, and providing your email address. Your login and password information will be sent to you at that time. 

## 2009 International Bankruptcy Class Schedule

Thursdays, 6–8, starting January 15 and ending April 23 (spring break: March 19)

### January 15

International Bankruptcy Principles and Problems: The Maxwell Case  
Don Bernstein and John Jerome

### January 22

Basics of Business Bankruptcy  
Richard Broude

### January 29

Area Studies: British Commonwealth  
Lewis Kruger and Gabriel Moss

### February 5

Area Studies: Latin America  
Dan Glosband and Adolfo Rouillon

### February 12

Area Studies: Western Europe  
Richard Broude and Alexander Klausner

### February 19

Area Studies: Asia  
Judge Allan Gropper and Professor Charles Booth

### February 26

Area Studies: Eastern Europe  
Judge Allan Gropper, Judge Charles Case, and Ed Adams

### March 5

Use of Chapter 11 by Foreign Nationals  
Don Bernstein and Zack Clement

### March 12

How Other Countries Deal with Chapter 15 Issues  
Richard Broude and Ian Fletcher

### March 19

Spring Break

### March 26

Chapter 15  
Dan Glosband, Judge Allan Gropper, Lewis Kruger, and Ralph Mabey\*

### April 2

Chapter 15  
Dan Glosband, Judge Allan Gropper, Lewis Kruger, and Ralph Mabey\*

### April 9\*\*

Chapter 15  
Dan Glosband, Judge Allan Gropper, Lewis Kruger, and Ralph Mabey\*

### April 16

Sovereign Debt  
Professor Anna Gelpern

### April 23

Review Problem  
Professor Ted Janger

*\*In each of the three classes on Chapter 15, at least two of the four listed faculty members will participate.*

*\*\* This class falls on the first night of Passover and will be rescheduled to a different night of the week.*



# Memories of Peter F. Coogan

By Julian B. McDonnell



▲ Peter F. Coogan

**P**eter F. Coogan was my mentor. He uniquely combined careers as a practicing lawyer, visiting professor, and scholar who published in the most prestigious law reviews. In all of these roles, Peter Coogan focused on the critical, real-life intersection of secured financing and bankruptcy law.

Coogan practiced from 1942 to 1977 with the Boston law firm of Ropes & Gray. He worked on corporate reorganizations. He represented a client that was financing motion pictures, which led him to become involved in the initial drafting of Article 9 of the U.C.C. Coogan was instrumental in convincing Karl Llewellyn to add the collateral category "general intangibles" to the original Article 9.

Together with Professors William Hogan and Detlev Vagts, Coogan in 1963 first published Secured Transactions Under the Uniform Commercial Code, a Mathew Bender treatise in loose-leaf form which he subsequently devoted himself to enlarging, revising and updating. He played an important role in shaping the 1972 Amendments to Article 9, explicating these technical changes in a commercial law classic, "The New Article 9," which he drafted on the deck of the Queen Elizabeth while cruising with his wife to Europe and which was published in the Harvard Law Review.

After his retirement from Ropes & Gray, Coogan was a visiting professor at many law schools including the University of Georgia. As a junior academic, I was most fortunate to meet him there and go to work for him, helping with revisions to the Secured Transactions treatise.

Coogan enjoyed a huge reputation, but he loved to spend time with young faculty and students. He was much in demand on the CLE circuit, traveling in the pre-Internet era to all parts of the country to make presentations. His genius was in taking the really hard stuff (like the Chapter 11 cram down) and making it understandable. He was an indefatigable worker, often starting as early as 3:00 a.m. He delighted in cranking out articles, polishing them in interaction with student law review editors and eventually publishing revisions of the pieces in his treatise. He worked on the writing before he went to practice or to teach. More than once,

he called me before 8:00 a.m. to ask what I had so far accomplished that day. When a complicated new decision came down, Coogan might make a half-dozen summaries of it in long-hand before he was satisfied with the product. Editors at Mathew Bender later told me that Coogan submitted pages that seemed like "they were on fire." Peter Coogan was very intense about his work. He was still actively writing at the time of his death at 80 in 1985. Once while at Georgia, he got an acceptance from the Harvard Law Review based on sending them an outline for an article. That, I thought, was an impressive feat indeed.

Coogan was not a fan of "economic analysis." He preferred to probe the im-

plications of new legislation by applying it to practical hypothetical situations. He taught that the interests of secured and unsecured creditors were often not antagonistic. He insisted that the secured creditor frequently provided the funding that allowed the unsecured to be paid. He was a master negotiator, and stressed that successful reorganizations were the result of careful negotiation and compromise, bringing all back to the task of restoring the common enterprise.

Most of all, Coogan taught by his example that meaningful achievement demanded sustained effort. Now, in my retirement years, I am working on the 92nd set of revisions for Secured Transactions. Originally one volume, the treatise has grown to five. I hope that Peter Coogan would be proud of how his old book is coming along. 📖

## Peter F. Coogan: A Personal Remembrance

By William F. McCarthy

**I**n the summer and fall of 1970, Ropes & Gray, where I spent the summer in 1969, graciously agreed to employ me for the five month hiatus before I reported for a three-year hitch in the U.S. Marine Corps. Shortly after I came to work, Peter F. Coogan asked me to come to his office to receive a new assignment.

Mr. Coogan, whose practice focused on banking transactions, was a respected senior partner of the firm. He was a member of the permanent editorial board of for the Uniform Commercial Code established by the American Law Institute and a member of the National Bankruptcy Conference. He had been the author of many law review articles on UCC topics. He had taught at both Harvard law School and Yale Law School. Mr. Coogan had also been the principal Ropes & Gray lawyer representing Serge Semenenko, the famous First National Bank of Boston loan officer who had made the bank the premier lender to Hollywood, and was famous for his skill in restructuring trouble companies, including, among others, Curtis Publishing of Saturday Evening Post fame.

The prior summer I had done several small assignments for Mr. Coogan and one or another of his acolytes, including Charlie Normandin. Mr. Coogan, while he was known to work associates long hours and to demand high quality work, was a genial man with an excellent sense of humor. He presided over a smart and pleasant group of lawyers, and the assignment was likely to involve secured transactions, an area

of law which I had found rational and interesting, especially as it had been taught by Professor (later Justice of the Supreme Judicial Court) Robert Braucher.

Mr. Coogan explained that he was advising the owners of the Yankee Vermont nuclear power plant under construction near the Connecticut River in Vernon, Vermont on a proposed lease-financing of the nuclear core. Wow, I said to myself. Barely three years before, I had applied for a summer job as a construction laborer at the plant. Now I would be working as one of the owner's lawyers on the financing of this massive project! Such a lease financing, Mr. Coogan said, had never been done; if it could be done, substantial regulatory and financial advantages would accrue to the owners, a general partnership of virtually every New England electric utility.

Thus began my abbreviated apprenticeship under Peter F. Coogan, a remarkable teacher, scholar, lawyer and gentleman. Unlike many senior lawyers, Mr. Coogan did not just send the associate out and wait patiently for a memorandum. Late every afternoon, I was expected to come to his office, sit in one of the two rockers, and discuss the cases that I had identified that day and the principles that could be derived from them. Mr. Coogan decided that my work should be expanded to tax cases dealing with similar issues, as well as the accounting literature that distinguished true sales from some kind purchase-money arrangement in which

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## Peter F. Coogan A Personal Remembrance

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title did not pass immediately. Formula after formula was advanced and dissected seeking a governing principle that would guide the transaction. Time of day was of no concern; Mr. Coogan startled my new wife with calls to our apartment as late as 11:00 pm, and as early as 5:30 am. She asked, not for the last time, what had she gotten herself into.

At some point, Mr. Coogan raised the implications of vendor-in-possession issues, since the owners would be the initial owners and then transfer the radioactive core to the bank-lessor. Of course, the UCC had taken a pass on vendor-in-possession issues in Section 2-402(2), leaving them to the pre-existing law of the states. While there were many cases across the country on this topic, there were three Vermont cases on vendor-in-possession. The one involved the sale of cut timber on a boggy lot (of which there are many in Vermont). The logger had sold the logs to a timber merchant in August, who had done nothing to move them prior to their attachment by creditors of the seller in September. Who got the logs? Answer: the buyer, since everyone (in Vermont) would know that it was not reasonable to expect a buyer to remove logs on a wet lot until it froze in November. How could that reasoning be applied to radioactive nuclear fuel?

All of this research and analysis was recorded in a series of three or four memos which were distilled and improved day after day. And, as we labored over the law, we explained to the CEO of the principal owner, as well as the banker and his counsel at Milbank Tweed in New York, our evolving views on the structure that would be needed. Unless Ropes & Gray could provide opinions that the owner and the bank-lessor could use to justify treating the arrangement as a true lease, and not a secured financing, the deal would not go forward in that structure.

At some point, we began drafting documents for such a transaction. Again, in the late afternoon, I would come to Mr. Coogan's office, we would analyze my draft and then he would summon his secretary to receive a dictated revision of the discussed provision. We would take pencil to the revision, changing again and again. Drafts went back and forth; we went to New York to negotiate. We conferred with the accountants and regulatory lawyers. Could this arrangement be off-balance sheet as to the owners? What were the risks to the bank-lessor if the nuclear core


melted down? Would a UCC-1 protect the bank-lessor's interest? Would a precautionary filing be effective to solve the vendor-in-possession issue? Would such a filing be an admission against interest on the true lease issue? Nothing was left to chance or assumption. The intellectual rigor, and complete honesty, that Mr. Coogan brought to every analysis was uncompromising. The client was entitled to our best advice, and only our best advice after we had exhausted every possible avenue of analysis.

One Saturday afternoon, our conference was held in Peter's 1790's farmhouse high above Pomfret, Vermont. Nicole and I drove up from my mother's home in Greenfield, barely traversing the steep, rutted track up the mountain. Peter, I and one of his sons felled a tree, one part of which formed the hand-carved bread board which Peter presented to me as a going away gift when I left for Quantico at the end of December. (Peter's bread boards are treasured mementos for many of his friends.) We discussed the deal by gaslight over soup and sandwiches cooked in a fireplace.

On December 31, 1970, I left Ropes & Gray for the Marines. Instead of leases, I ran the obstacle course and studied small unit infantry tactics before being assigned as prosecutor or defense counsel in courts-martial. By early 1973, I was a special courts-martial judge in 2d Marine Division at Camp Lejeune, North Carolina when a call came out of the blue from Peter. The Vernon deal had been finalized as a secured loan; the parties could not accept the implications of a true lease, especially on issues of recourse and reliance by the lessor on residual value. Peter was spending the spring semester teaching at Duke and finishing an article, which relied in part on the research that I had done on the Vernon project. At our invitation, Peter and Barbara came to Camp Lejeune for a weekend. Over drinks, my Marine lawyer friends and I regaled them with tales of military jurisprudence and Marine life. Peter and I had several long sessions reviewing the memoranda that I had worked on during the summer and fall of 1970. Later that spring, Duke Law Journal published Peter's article *Leases of Equipment and Some Other Unconventional Security Devices: An Analysis of UCC Section 1-201(37) and Article 9*, 5 Duke Law Journal 909 (1973), in which Mr. Coogan graciously recognized my contribution, along with that of Charles Mooney.

I returned to Ropes & Gray on January 2, 1974, assigned to the Litigation Department after my two Marine years trying

and judging courts-martial. The firm had adopted for the first time a mandatory retirement regimen for partners. Born in 1904, Peter would be fully retired in 1977 under the new dispensation, and he had begun a phase-down in 1973. Peter had a successful career at Encyclopedia Britannica before earning bachelor's and master's degrees in law in his late thirties. He had only begun practice at Ropes & Gray in 1942. While the retirement program was financially generous, Peter felt that the new system was cutting him off from practice prematurely and at the height of his skills. In transition, he returned to his real love, teaching law, and spent the spring semester each year teaching at law schools like Virginia, Duke, Georgia, Southern California and Houston. He also spent time as "scholar-in-residence" with his friend Pat Murphy at Murphy, Weir and Butler in San Francisco. Peter became a guiding light for the new Vermont Law School, teaching there in the fall semesters. He also continued an active interest in ALI/ABA matters, especially unconventional security devices and leasing. But there were few chances for me to again work under his guidance; he passed away in June, 1985.

But the experience of that summer and fall of 1970 provided for me a model of what a sound business lawyer should be. While clients hire lawyers to accomplish the client's objectives, the lawyer best serves the client when he or she maintains complete integrity in providing advice grounded in a mastery of the law and scrupulous intellectual honesty. A legal opinion or advice that warps the applicable principles or ignores the real issues may close a deal, but the flaws hide a ticking time bomb that under stress can explode to the great harm of the client and others. Curiously, many of the recent phenomena that involve dubious legal opinions, and resulting explosions (Enron SPV's, CDO's and CLO's come to mind), have involved issues that are the same as, or related to, the issues that Mr. Coogan and I agonized over in 1970: the impact of recourse on true sale (or true lease) vs. secured loan, bankruptcy-remote structures, substantive consolidation, and off-balance sheet entities. A legal profession that regained the sense of independence, analytical vigor and intellectual integrity characterized by Peter F. Coogan would be an invaluable building block of a more stable and resilient financial system, one in which deadly risk is no longer masked by shallow, "reasoned" opinions and advice. 

## Peter F. Coogan: A Mentor of Mentors

Charles W. Mooney, Jr. and Charles A. Heimbold, Jr. Professor of Law  
University of Pennsylvania Law School

**P**eter Coogan truly was a mentor of mentors. By that I do not mean merely that he was an excellent mentor, which he was, but that those he mentored were inspired by him to mentor others. That is how we have been able to pay back what Peter gave to us.

I first saw Peter at the first commercial transactions class of the spring term in January 1971—only about 37-plus years ago. I was a 2L at Harvard Law and our teacher for the yearlong course, Robert Braucher, had been appointed to the Massachusetts Supreme Judicial Court. So Peter took over and, of course, spent the spring term solely on UCC Article 9. Many of you will appreciate that this was a time when Peter, Braucher, Homer Kripke, and others were finalizing the 1972 revisions to Article 9. Our class was privileged to hear the inside story of the debates within the drafting committee that was charged with the revisions.

My recollection is that after the first couple of weeks of class, Peter called on either me or Bruce Fein (an accomplished constitutional scholar who is seen frequently on all of the cable news channels) every class. I think that was because Peter had concluded that we were the only ones that were always prepared. [I could write 25 pages here about the substance of the course, but I will not do so.] I recall the final exam very well, because my analysis of when a putative lease actually creates a security interest obviously caught Peter's eye. He called me during the summer (I was a summer associate in Oklahoma City, my home town) to invite me to be his research assistant during the following academic year (my 3L year).

Early in the fall term of 1971 Peter agreed to supervise my third-year writing requirement (or whatever we called it then). My topic, of course, was "when is a lease really a security agreement." At this time I had little money, my clothes were largely "irregulars" from Filene's basement (yes, it really was in the basement), and I had a pony tail down to my butt. Parading through the halls of Ropes & Gray in this getup was a real treat—especially inasmuch as I am sure that my clothes smelled of a bit of teargas and probably something else that would have marked the era. (This is when I first heard of Bill McCarthy, who was away in the military at the time.) I finished my thesis and earned a decent grade.

Peter then asked me to turn it into a chapter for his Coogan, Hogan & Vagts treatise (Matthew Bender, at the time). After graduation in 1972 I became associated with the firm now known as Crowe & Dunlevy. I completed the chapter in 1975 as a young associate (Chapter 29A, it was). It was my first publication.

Also in 1975 Peter became a mentor to someone very close to me, a partner at my law firm in Oklahoma City, Kent Meyers, who was the person with whom I worked the most. Kent decided to suspend his practice to pursue an LL.M. degree at Harvard. I made the introductions and Peter took it from there. He worked with Kent as Kent wrote his thesis on perfecting security interests under certificate-of-title laws. Kent was awarded his degree in 1976 and returned to his practice with Crowe in Oklahoma City. And, of course, at Peter's request Kent also transmogrified that piece into a chapter in Peter's treatise.

In 1976 Peter was asked to chair PLI's very popular Equipment Leasing program (with the investment tax credit then in effect, it was VERY popular) in New York, New Orleans, and San Francisco. He asked me to be the leadoff speaker on the first of a two-day program—on, what else, distinguishing a true lease from a security interest. This is when I met another of Peter's mentorees, Ronald DeKoven, then of Katten Muchin in Chicago and a rising bankruptcy star with an equipment leasing subspecialty. (Ron is also College Fellow.) At the first session in New York, four years out of law school and sitting before 225 of New York's finest, before I could launch my presentation Peter asked me (with no forewarning), "Mr. Mooney, why did you not lease your breakfast this morning?" I saw shooting stars and bright neon pinwheels, but somehow regained consciousness and finished the presentation. (Peter was stuck in Boston for the New Orleans version, and Ron and I had the morning to ourselves. It was much less stressful and we had a lot more fun the night before.)

I could stop the narrative here, because what Peter did for me by 1976 was probably enough to account for where I am today. But there is more to the stories of Peter's mentorship of me and others.

Peter also asked Ron to write a chapter for Peter's treatise, on lease remedies—that was Chapter 29B. That chapter which

arose in large part from Ron's excellent published article analyzing a then prominent case, *Puritan Leasing*. By 1981 Ron and I were both lateral partners (two of the very first) of Shearman & Sterling, in New York. Again, much credit goes to Peter. (Peter also sponsored Ron as a conferee of the National Bankruptcy Conference.)

In 1980 I was named the chair of a new subcommittee on leasing of the ABA Business Law Section's UCC Committee (with Peter's influence, I am sure). In 1981 (by then a partner at my firm in Oklahoma City, before my move to Shearman), I wrote an article for *The Business Lawyer* proposing a uniform law on personal property leasing, suggesting that an article 2A of the UCC might be in order. That eventually came to pass. In 1982 Ron DeKoven (we were then at Shearman) became the reporter for what was to become Article 2A and I became chair of the ABA's UCC Committee. Peter, of course, was there every step of the way, at every meeting, and communicating with us continually through this period. On more than one occasion during my New York years Peter and his lovely wife, Barbara, stayed in my home when visiting New York.

During the early 1980s Peter introduced to Ron and me another of his mentorees, Amy [Amelia] Boss. Peter had concluded that Amy's ideas about equipment leasing, and especially remedies and assignments of rights under leases, were quite special. Peter was right. Peter, as usual, introduced Amy to the right folks and helped her to showcase her work and her ideas. Peter asked Amy to write two chapters in his treatise, one of which she co-authored with Peter. Amy has done OK. After long service as a professor of law at Temple, Amy is now Trustee Professor of Law at Drexel, as well as a member of the UCC Permanent Editorial Board and the ALI Council and a former Chair of the ABA Business Law Section.

Peter died in 1985. Ron DeKoven and I attended the funeral together. Those present included an amazing collection of luminaries of the law profession—from the bar, the bench, and the academy. (I didn't know whether to pray or ask for autographs.) But Peter is remembered best by those of us who were far from the tops of our professions when he first took us under his generous wing. 🙏

## Where Are They Now?

by Kaaran Thomas, Chair, Distinguished Bankruptcy Law Student Committee

In 2003, the College established the Distinguished Law Student Program to recognize and encourage law students who are interested in specializing in the insolvency field. On a rotating basis, with half of the circuits represented every other year, Fellows, law professors and deans around the country are solicited for nominations of students who meet the rigorous standards developed by the Committee. Those nominations are then carefully reviewed and one nominee from each circuit, is selected to attend the Induction Ceremony and Events as a guest of the College. This gives the students not only a chance to experience the educational portion of the weekend, but also allows them to meet top professionals in their chosen field.

As we select our 2009 (seventh) class of Distinguished Students, we are mindful of the time and effort we have put into the program. Unlike our Fellows, our students leave the annual meeting to pursue their careers and lives below our radar screen, leaving us to ask whether the college chose wisely? Did we make a difference in the lives of these students?

The Distinguished Student program now has thirty alumni. To keep up with their activities and whereabouts, this column will regularly feature some of these students. We also seek input from Fellows on the whereabouts of alumni we cannot locate as part of the effort to reach out to them. We hope our efforts will be informative and lead to better ways to select, keep up with, and find ways to work with our alumni.

### Class of 2006: Burke Gappmayer, Tenth Circuit



▲ 2006 Distinguished Bankruptcy Law Student

Gappmayer is an attorney with the law firm of Holland & Hart LLP in its Salt Lake City, Utah, office. He represents a wide variety of asset-based lenders, including factoring companies and equipment finance companies, providing legal counsel through the underwriting and due diligence phases, through the documenta-

tion phases, and into and throughout the workout and litigation phases.

"I am sincerely grateful for being chosen as a Distinguished Student by the college. Shortly after receiving the honor and attending the college's convention, I was offered a job with David Leta, an American College of Bankruptcy Fellow. I attribute this to the exposure and recognition provided me by the college," Gappmayer says. "By working in Mr. Leta's bankruptcy group, I discovered the world of asset-based lending. Being chosen a Distinguished Student and attending the college's convention helped cement my excitement surrounding bankruptcy and secured transactions, and I am now enjoying a practice where I have a high concentration of both. I plan to continue my involvement in bankruptcy and other related matters, and I look forward to attending the college's convention at some point in the future."

### Class of 2007: John Rains, Eleventh Circuit



▲ 2007 Distinguished Bankruptcy Law Student

Rains is an attorney at Bondurant, Mixson & Elmore, a business litigation firm in Atlanta, Georgia. Before joining the firm, he served as a law clerk to the Hon. Ed Carnes of the U.S. Court of Appeals for the Eleventh Circuit.

Rains writes, "My bankruptcy experiences gained both in law school and through the American College of Bankruptcy's annual meeting left me well-prepared for my work as a law clerk. Although the Court of Appeals handles relatively few bankruptcy appeals each year, my interest and rudimentary knowledge allowed me to offer insight that few other law clerks have. I was also armed with the observation I gained by attending the college's annual meeting that bankruptcy practitioners and judges are keenly aware of every Court of Appeals decision involving bankruptcy law—even unpublished, nonprecedential decisions. This perspective is one I doubt many law clerks appreciate.

"My bankruptcy experiences have already come in handy in my law practice. On my first day at the firm, I was assigned to an adversary proceeding involving an \$80 million dollar professional malpractice claim. I was told that one of the reasons I was selected for the assignment was my professed interest and experience in working on bankruptcy-related matters."

### Class of 2008: Daniel Centner Fifth Circuit



▲ 2008 Distinguished Bankruptcy Law Student

Centner had moved to New York in early August this year to begin work as an associate at Vinson & Elkins LLP's New York office. He was scheduled to begin work on September 15; however, the office was so busy, he was asked to start a week earlier. He has been assigned to the Complex Commercial Litigation group and is already working on a limited partnership Chapter 11 case.

"My experience with the college taught me many things about bankruptcy, but even more important, it taught me some invaluable lessons about practicing law," says Centner. "When I got back from the award ceremony, the professor who nominated me (Mark Wessman) asked me about my experience. I told him that it was a great time and a great honor, but the most memorable part of the weekend was being around such a remarkable group of people who, collectively, represented the best and brightest bankruptcy lawyers in the world. Being exposed to such an impressive gathering of people is, for many, an almost once-in-a-lifetime opportunity. That said, my experience with the college has inspired me to become like the people I met; to strive to one day achieve the level of excellence that the college represents.

"In addition, being around the college taught me about professionalism. During law school, there are few chances to interact with practitioners, and even as a summer associate, your interactions are generally limited to the attorneys in your firm. I thought it was great to see how everyone was able to put their competitive differences aside, at least for the weekend, and come together to exchange ideas and build relationships. In particular, I was

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## News from the National Bankruptcy Archives

By C. Jordan Steele, Archivist, Biddle Law Library, Penn Law School



▲ C. Jordan Steele

**G**reetings from the National Bankruptcy Archives! We have had a busy summer and fall here at Penn Law School. As many of you know, through some generous outside funding from the National Conference of Bankruptcy Judges, we were able to have a video made that promotes the archives' range of collections. All parties involved in the project are pleased with the results. You can view the video at ([www.law.upenn.edu/bll/archives/bankruptcy](http://www.law.upenn.edu/bll/archives/bankruptcy)) or contact me to receive a DVD copy.

The archives also began its inaugural digitization project as part of the Leon N. Forman Bankruptcy Digitization Program. Safe Sound Audio, a respected audio preservation studio, is performing a digital conversion of upward of 50 oral histories with some of the singular figures in the bankruptcy field—many of them ACB members. We're looking forward to putting these digitized interviews up on the web, along with their corresponding transcriptions, to be enjoyed by a worldwide community of scholars. Look for the debut of this project in the next few months.

In coordination with the unveiling of our first digitization project, I am working with Diane Sigmund and other ACB members to host an event at the Penn Law School celebrating the start of the digitization program and its namesake, Leon N. Forman. Event details are forthcoming.

On the collection development front, Henry J. Sommer, one of the most important figures in consumer bankruptcy law in the past 30 years, has graciously donated his papers to the archives. I am excited to make his papers available to researchers and to enhance the archives' holdings related to the field of consumer bankruptcy. Also of note, we recently acquired ACB member Ken Klee's research materials related to the book he wrote about the history of bankruptcy cases in the Supreme Court. We look to digitizing this impressive corpus of documents in the near future.

As always, if you're interested in learning more about projects the archives is working on or to inquire about policies and procedures regarding donations, please contact me at 215-898-5011 or [steelej@law.upenn.edu](mailto:steelej@law.upenn.edu). I look forward to hearing from you. ☰

## Pro Bono Committee

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Covers expense of multi-user bankruptcy software and web-based client application process for more efficient service to Chapter 7 debtors, and software download costs and staff time.

**Volunteer Lawyers Project/Boston Bar Association (VLP).** Funds pro bono Chapter 13 law student clinic supported with a senior attorney. VLP will recruit three attorneys and three students for this pilot project. Students will interview, gather materials, draft papers, and work with clients, while volunteer lawyers will supervise. VLP envisions this pilot project as a model for others around the country.

**New York City Bankruptcy Assistance Project.** Provides bankruptcy legal assistance to New York City residents at or below 200 percent of the poverty line. More than 300 volunteers from more than 40 law firms provide pro bono support. Law students from Columbia and Harvard also donate pro bono hours during the academic year, with Harvard covering students' travel costs to New York. With the project's innovative Remote Access Capability, volunteers are able to work in their own offices with full access to case files. The project maintains a client hotline for screening clients, making appointments, referrals, and quick legal advice.

## Forming New Projects

The committee also encouraged the establishment of pro bono consumer debtor projects in Wilmington, Delaware, and St. Louis, Missouri. Bankruptcy judges and college Fellows in each location have been working with local practitioners to set up and house projects similar to those described above. In addition, a committee member is working in Miami, Florida, to establish a debtor reaffirmation project similar to the successful reaffirmation project in Atlanta, Georgia, previously funded by the college and the foundation.

## Committee Membership

The college doubled the committee's size from eleven to twenty-two members during the past year. Aside from new members from the entire country, the committee gained one bankruptcy judge; the nation's leading consumer bankruptcy lawyer and scholar; and other fellows with a strong history of effective pro bono bankruptcy work. ☰

## International Committee Report

By E. Bruce Leonard



▲ E. Bruce Leonard

**T**he college's International Committee met in Scottsdale, Arizona, during the National Conference of Bankruptcy Judges in September. The committee heard lively and valuable reports on a number of topics:

- The Alitalia bankruptcy, presented by Justice Luciano Panzani
- Developments in China, presented by Professor Charles Booth
- The work of the United Nations Commission on International Trade Law in the international insolvency area, presented by Christopher Redmond
- Experiences with Chapter 15 cases in Delaware, presented by Jim Patton and Bill Schorling
- The 2008 International Judicial Colloquium in Paris, presented by the Hon. Charles G. Case and Jan Chubb

One of the committee's major initiatives is its Liaison Outreach Program. Under the program, interested committee members will pursue liaisons with International Fellows of the college in specific countries and with other prominent professionals in countries where the college is not yet represented. These committee members would then contribute a short report on developments in their liaison countries, which will be melded into an omnibus report to the college at the annual Induction Ceremonies in Washington, D.C. Liaison members are also particularly encouraged to contribute interesting and significant materials from their liaison countries to the International Resources Section of the college's new and revised website.

Committee membership is open to all Fellows and International Fellows. We encourage everyone interested in the international aspects of insolvencies and reorganizations to join the committee and participate in its activities and initiatives. Anyone who would like to participate in the International Committee should e-mail Bruce Leonard at [bleonard@casselsbrock.com](mailto:bleonard@casselsbrock.com) or Dan Glosband at [dglosband@goodwinprocter.com](mailto:dglosband@goodwinprocter.com).

The next meeting will take place during the annual Induction Ceremonies in Washington, D.C., in March. We appreciate everyone's interest in the international aspects of the college's projects and activities. ☰

## Bankruptcy and the Supreme Court Book to Be Published and Distributed to College Fellows in January 2009


The College and the Foundation are pleased to announce the completion of a major project that was first developed in 2002. After 7 years, Ken Klee has completed his book sponsored by the College and the Foundation on Bankruptcy and the United States Supreme Court. A complimentary copy will be distributed by LexisNexis to all fellows of the College in January 2009. Prof. Klee described this six chapter book as "a comprehensive desk reference for lawyers, judges, and scholars examining the Supreme Court's bankruptcy decisions from 1898 through 2008 from six different perspectives."

Chapter 1 examines the Court as a governmental and political institution devoting attention to the Court's business and habits, i.e., the processes by which the Court receives bankruptcy cases and decides them and the rules it promulgates to regulate bankruptcy courts and practice.

Chapter 2 looks at how the Court tends to resolve conflicts between bankruptcy law and other areas of state and federal law, such as administrative law, family law, labor law, pension law, probate law, real estate law, and tax law. This discussion is linked closely to Chapter 3 which discusses the constitutional breadth of the bankruptcy power and analyzes how the Court reconciles bankruptcy law with constitutional law, sovereign immunity, federal preemption, and federalism, as well as the use of state law in bankruptcy.

Chapter 4 discusses the Court's treatment of the bankruptcy court as a judicial institution. In particular, it examines how the Court has sculpted and restricted the bankruptcy court's subject matter jurisdiction, powers of the bankruptcy court, and res judicata and collateral estoppel effects of bankruptcy court and non-bankruptcy court judgments.

Chapter 5 analyzes, in considerable detail, bankruptcy law, doctrine, and policies that arise primarily or exclusively of the context of the Bankruptcy Code, such as avoiding powers, dischargeability, claims priority and distribution, and plan confirmation.

Chapter 6 discusses some of the bankruptcy cases over the past 111 years in which the Court sharply changed the course of bankruptcy law. It also includes some favorite cases, regardless of their impact on bankruptcy law or doctrine. 

## 2009 Induction Ceremony and Events


continued from page 1

will receive a complimentary copy of this invaluable research.

### Distinguished Service Award



▲ Ralph R. Mabey is an attorney, a law professor at the University of Utah, and a former bankruptcy judge. He was chair of the college from 2003 to 2005, president from 2001 to 2003, and a director from 1995 to 2001. He is the embodiment of the college's motto "give something back" in his professional and personal life, and we look forward to honoring him.

Online registration for the Induction Ceremony will be available by early December. As Class 20 Fellows accept their nominations, their names will be added to the list on the college website. If you have any questions or need further information on the Induction Ceremony, please do not hesitate to contact me at sbedker@amercol.org or my assistant, Carole McNamara, at college@amercol.org or 703-934-6154. 

During the All-Fellows Lunch on Saturday, March 28, we will honor Ralph R. Mabey of Stutman, Treister & Glatt in Salt Lake City as the recipient of the 2009 Distinguished Service Award.

## Where Are They Now?

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amazed with the way the representatives from the Fifth Circuit went out of their way to include me in their conversations and events, so that I could begin to build some relationships of my own. It was an experience I won't ever forget!"

### Help Us Find...

We are looking for the following alumni. If you have information on their whereabouts, please send it to Kaaran Thomas at kthomas@mcdonaldcarano.com.

### Class of 2003

Samuel Khalil (Hofstra), former associate at Milbank Tweed Hadley & McCoy in New York

Laura McGeoch (Temple), may be in Australia

D. J. Reynolds (William and Mary)


### Class of 2004

Cynthia Wooden, Eighth Circuit, former associate with Blackwell Sanders Peper Martin LLP in Omaha, Nebraska, specializing in commercial transactions

Nick Swartzendruber, Tenth Circuit, former associate with Brown Drew & Massey LLP in Casper, Wyoming, specializing in bankruptcy and litigation

### Class of 2005

Lindsey Moran, Ninth Circuit

Nicole Brandi, Eleventh Circuit 

## As of December 5, 2008, 92 Fellows have donated a total of \$20,265 to the Foundation

Prof. Peter C. Alexander	James D. Decker	Richard Kennedy	Joel B. Piassick
Hon. Thomas L. Ambro	Ronald W. DeRuuk	Martha E.M. Kopacz	Mary Ann Rabin
Daniel E. Armel	Francis P. Dicello	Kay S. Kress	John Rao
Philip E. Beard	Mark C. Ellenberg	Lewis Kruger	Patricia Redmond
Mark D. Bloom	Ford Elsaesser	David S. Kurtz	Margery Reed
Michael A. Bloom	Hon. Joan Feeney	Hon. Joe Lee	M. Freddie Reiss
Prof. Charles D. Booth	Hon. Judith K. Fitzgerald	E. Bruce Leonard	Randy Rogers
Bradley Arant Rose & White LLP	Hon. Judith K. Fitzgerald	Richard B. Levin	Leonard M. Rosen
John Patrick Darby	Jean-Yves Fortin	Marc A. Levinson	Hon. Mary Davies Scott
Joseph Braunstein	Prof. Elizabeth Gibson	Hon. Basil H. Lorch	J. Robert Seder
Francis K. Buckley, Jr.	Hon. Paul M. Glenn	Alfred S. Lurey	Raymond L. Shapiro
John Wm. Butler, Jr.	Daniel M. Glosband	Hon. Robert Mark	Myron M. Sheinfeld
Richard P. Carmody	Marcia L. Goldstein	Jarrel D. McDaniel	Paul M. Singer
George B. Cauthen	Herbert M. Graves	W. Clarkson McDow, Jr.	Lawrence K. Snider
<i>in honor of Joel Piassick's service to the Foundation</i>	Hon. James B. Haines, Jr.	Michael McGrath	Claudia Z. Springer
Hon. Glen E. Clark	Paul E. Harner	Hon. Mark B. McFeeley	Prof. Walter J. Taggart
Hon. Joy Flowers Conti	Grover Hartt III	Hon. C. Ray Mullins	Tomoo Tasaku
Michael Cook	David G. Heiman	Sally S. Neely	Steven Towbin
Lawrence D. Coppel	Philip J. Hendel	Professor Grant W. Newton in memory of Prof. Frank Kennedy	R. Patrick Vance
Gregory B. Crampton	Camille Hope	Dr. Klaus Pannen	Hon. Mark W. Vaughn
Prof. Marianne B. Culhane	Hon. Barbara H. Houser	Klaus Pannen	Prof. Jay L. Westbrook
Guy Davis	Hon. Kevin Huennekens	Hon. Alexander L. Paskay	Bettina Whyte
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	Stephen Karotkin		Richard L. Wynne
			Gregg W. Zive C. Hall Swaim



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