

**REMARKS OF GERALD K. SMITH ON THE OCCASION OF THE PRESENTATION
OF THE COLLEGE'S DISTINGUISHED SERVICE AWARDS
TO KEN KLEE AND TO RICHARD LEVIN**

BACKGROUND

I was deeply honored when asked by my longtime friend Mike Cook to present the College's Distinguished Service Awards to Ken Klee and Richard Levin.

Ken and Rich were counsel to the Judiciary Committee of the House of Representatives. Ken joined the Staff in 1974 and Rich in 1975. Imagine their leaving the sunny West Coast to work in meager facilities in D.C. They had, at most, a modest knowledge of bankruptcy law, but quickly immersed themselves in the recent Congressional Hearings, the several SEC Investigations, the Brookings Study, Parts I and II of the Report of the Commission on the Bankruptcy Laws, and the lengthy Congressional hearings in the 1930s. Only Rich had any practical experience, a few months clerking with Stutman, Triester and Glatt in Los Angeles.

Ken and Rich conducted hearings and skillfully questioned witnesses! They then redrafted the pending proposals taking into consideration innumerable suggestions and making sure the redrafts met Congressional form requirements. In the words of Representative Don Edwards, who was 100 in January of this year, "[W]e are deeply indebted to the . . . staff of the Judiciary Committee of the House of Representatives. . . ." Don, on behalf of the College, we extend our thanks and wish you many more birthdays. We will be forever indebted to you! But for your efforts, there would not have been significant reform of our Bankruptcy laws!

I served on the Staff of the Commission as Deputy Director from the summer of 1972 until late July 1973. In August, the Report of the Commission was submitted by its Executive Director Professor Kennedy.

The initial House version of today's Bankruptcy Code, the Commission's proposed Bankruptcy Law of 1973, was introduced by Representative Don Edwards, for himself and Representative Charles Wiggins, and reintroduced in 1974 in the 94th Congress as H.R. 31. Congressmen Edwards and Wiggins also introduced in 1973 a competing bill sponsored by the National Conference of Bankruptcy Judges, which was reintroduced in 1975 as H.R. 32. Ken Klee was on board in 1974 and Rich Levin joined the Staff in the summer of 1975 when hearings on H.R. 31 commenced, initially on Municipal Bankruptcy which needed early consideration to avoid an insolvency proceeding for New York City.

The Commission recognized that Courts were inappropriate administrators of a Bankruptcy System and adopted the Brookings Institute's recommendations as to administration; however, it did not propose or even consider the need for life tenure for judges. This was due to two of its members being Article III Judges. The Article III Judges strongly opposed life tenure for the judges of the proposed Bankruptcy Court. The conflict led to a complete lack of analysis of the subject of tenure by the Commission's staff. The Report of the Commission did deal with the need for a separate bankruptcy court and divorcing the Bankruptcy Judge from administrative duties, but it did not consider the power of Article I Judges to resolve disputes.

The importance of Ken and Rich to the passage of the Bankruptcy Act in 1978 cannot be overstated. They orchestrated a compromise bill between the House and Senate, resolving 170 differences. Importantly Ken and Rich created a successful strategy to avoid the bill going to Conference Committee, which would have given special interests time to lobby for its defeat. Rich proofread the final

bill and Ken prepared the important joint statements for Congressman Edwards and Senator De Concini.

KEN KLEE

When Ken Klee became a member of the Staff of the Committee on the Judiciary, he had no experience as a lawyer, but he did have an incredible advisor, my good friend, Professor Vern Countryman, who worked closely with the Commission.

As a result of Vern's discussions with Congressman Wiggins, Ken came to Washington, D.C. to work for Congressman Wiggins and later Congressman Butler, as Associate Counsel to the Committee on the Judiciary. Ken's work led to the introduction of a revised version of the Commission Bill, which took into consideration several aspects of the Judge's bill.

I have read most of what Ken has written on bankruptcy and constantly use his Bankruptcy and the Supreme Court (2008). His recent update, Bankruptcy and the Supreme Court: 1801-2014 (2015), brings the Supreme Court cases analyzed to 685! Of Ken's numerous other writings, my favorites are: "All You Ever Wanted to Know About Cram Down Under the New Bankruptcy Code," (1979) and "Cram Down II," (1990). Ken's books on the Supreme Court were funded by the College.

ALI-ABA's Fundamentals of Bankruptcy Law is, in my opinion, the best text book on Bankruptcy. Both Rich and Ken were significant contributors. Ken and Rich donated their time to its creation including the time spent on yearly lectures for ALI-ABA for over 30 years.

Ken has been involved in numerous important bankruptcy cases over the years, including the representation of Jefferson County, Alabama, in its

pending Chapter 9 case, Pennzoil Co. in the Texaco chapter 11 case, and he was the Examiner in the Tribune chapter 11 case. Earlier, while Ken was with Bob Shutan and Ron Trost, two of my favorite lawyers and close friends, he worked with Ron on the Chrysler and Roberts Farms reorganization cases and later, while with Stutman, Triester and Glatt for nearly 20 years, a firm I had worked closely with on several matters in my earlier life, he was involved in large reorganizations, including such well known cases as Barney's, Standard Brands, and Iridium.

Ken somehow found the time to teach. His career as a teacher extends over 35 years and includes one year at both Harvard Law School and Georgia State College of Law, and 35 years at UCLA Law School, the last 17 as a member of its faculty.

In 1999, Ken joined with several lawyers from the Stutman firm to start a new firm that is known as Klee, Tuchin, Bogdanoff & Stern where he continues to work on major matters, including the representation of Jefferson County in its Chapter 9 case, the equity investors in 203 North LaSalle Street, and the debtors in the Charter Medical and Orion Pictures cases.

Ken joined the National Bankruptcy Conference in 1978. Since then, Ken has contributed significantly to the NBC's work. Ken also is a member of the American Bankruptcy Institute and the American Law Institute. He recently served on the American Bankruptcy Institute's Commission to Study the Reform of Chapter 11. His awards include the American Inns of Court Award, the Emory Bankruptcy Development Journal Award and the Judges' Endowment Education Award.

RICH LEVIN

Rich Levin had limited experience when he joined the House Staff. In 1974 he worked as a summer associate with a commercial and bankruptcy firm and in 1975 he worked at Stutman, Triester & Glatt. He received an offer from Stutman, but was not ready to practice. George Triester was instrumental in paving the way to his being employed as Assistant Counsel by the Judiciary Committee. Rich met with Alan Parker, Committee Counsel, and was employed by the Committee the end of May, 1975, upon graduation from Yale Law School.

After serving three years as Assistant Counsel, Rich joined Stutman, Triester & Glatt and practiced there for 16 years. After a short stint in the corporate world, he went with Skadden, Arps, Slate, Meagher & Flom, initially in Los Angeles and then New York City, until 2007 when he joined Cravath, Swaine & Moore, as its first lateral partner since the end of the 1940's. His mandate was to start a "new practice."

Rich's work on Chapter 9 probably led to his recent role in helping the Detroit Institute of Arts and preservation of its art. In Rich's words "I felt that the soul of the City was at stake, and I'm proud of the role I played in helping to save it."

My favorite periodic summary of cases is "Recent Developments in Bankruptcy Law" authored quarterly by Rich. For that and his Business Bankruptcy Updates for the Federal Judicial Center's Bankruptcy Judge Workshops, at which he teaches twice a year, Rich received the Excellence in Education Award from the National Conference of Bankruptcy Judges Endowment. Rich also received the Emory Bankruptcy Developments Journal's Lifetime Achievement Award, American Inns of Court Award, and was ranked by Super Lawyers in 2014 as the number one practicing lawyer in the New York Metro Area. Rich currently chairs the National Bankruptcy Conference and contributes significantly to its work.

Rich Levin's generous nature is reflected in his comments on the occasion of receiving the Emory Bankruptcy Developments Journal's Lifetime Achievement Award in 2004. "[B]ankruptcy is vastly unpopular....The bankruptcy law is subject at every turn to legislative and judicial attack to narrow its scope, to make it less available, to carve out exceptions to protect certain creditors groups, whether by exception to discharge or by special priorities. . . . What can you do? . . . Join and become active in groups that promote and stand for sound bankruptcy laws. . . . Perhaps in a pro bono program for consumer debtors. . . . Help educate the public, the press and legislators about the importance of the bankruptcy system. . . ."

CONCLUSION

In concluding, I wish to touch on what is most important. Both Ken and Rich have beautiful and devoted wives and accomplished children. Rich's charming wife, Kathleen, is in his words, "my support and my balance for over 36 years. She was a legislative assistant to a member of the Subcommittee while we were working on the Code. The rest is history, a very happy history." Rich and Kathleen have three children, Dan, a computer engineer, Mike, an artist completing his masters in fine arts at Pratt Institute in Brooklyn this spring, and Sarah, a bankruptcy lawyer at Davis Polk.

Ken met his charming wife, Doreen, in junior high school. In Ken's words, "we became friends in high school on UCLA advanced placement. Max is our older son, and Nathan our younger. Both were born while we lived in the D. C. area and both work as computer programmers."

Ken and Rich are very proud of their Jewish heritage. Ken is a practicing Jew and has pursued Jewish mysticism, even studying Kabbalah. He serves as a Rabbi once a week. Rich is also a strongly committed cultural and ethnic Jew.

Ken and Rich are perfect examples of those who have destroyed the myth that working long and hard as a lawyer destroys a marriage. They have wonderful wives who have been strongly supportive of their work intensive careers for over 35 years, and they have accomplished children.

Let me conclude by thanking their lovely wives, Doreen, Kathleen, and their remarkable children, Dan, Mike, Sarah and Max and Nathan for their support and encouragement of the careers that have been of such importance to bankruptcy and related laws and thank you Ken and Rich.

Everyone, please join me in congratulating Ken and Rich on their remarkable careers and the receipt of the College's Distinguished Service Awards.

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