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KEYNOTE SPEECH  
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First, I extend my congratulations to our new inductees. I also congratulate your families. Long hours, dedicated service and commitment to excellence require understanding and support of your family members. So they too should feel good about being a participant on your professional journey, and proud of all that you have accomplished.

When I considered what to say tonight, I concluded that this audience mix of professionals and non professionals is not looking for a very technical discussion of the Bankruptcy Code. Rather than travel that road, I would like to briefly express to you how I feel about being a professional and my views on some of the changes we are confronting and trying to manage in our professional lives.

Each time I come to this Capitol, I am reminded that we are a nation ruled by law and not by man. One Supreme Court and one case can make a huge difference in our daily lives. Decisions like *Brown vs the Board of Education*, *Gideon vs Wainright* and *Roe vs Wade* are woven into the legal tapestry of our country. In our system, the rule of law is one of America's greatest treasures.

It is under this magnificent system of law that we are licensed to be participants in a great and noble profession. I am proud to be a lawyer, and I hope that if I perform with excellence, in some small way, I too can make a difference. If someone asks me "Should my child become a lawyer?", I answer with a resounding "Why not", unless, of course, he or she has an offer from Goldman Sachs.

I especially like being a bankruptcy lawyer. My partners are puzzled over how we bankruptcy specialists remain so collegial. Perhaps we are brothers and sisters in desolation, doing what some describe as emergency room service. It is a people practice, with many constituencies competing for the remaining wealth of a troubled entity. In such a legal storm, we must provide a safe harbor and calming waters. You can wag your tongue for hours in a conference room or painfully shuffle your feet in a court room. I liken a bankruptcy lawyer to a professional golfer – you have to be proficient at using every club in your bag. Is it any wonder that a number of successful bankruptcy lawyers are also actively involved in law firm leadership, some even serving as managing partners and administrators of major law firms.

To survive in this professional environment, however, also requires a willingness to anticipate and manage change. Unfortunately, we bankruptcy professionals do not have the luxury of “settling in.”

I would like to briefly address just 4 areas of change which I think currently affect and challenge our approach to the practice of law. They are: technology, congressional influence, what I call the street game and cross-border issues also identified with globalization or transnational matters.

### Technology

First, let me address technology. I am now overwhelmed with technology, never out of touch from anywhere in the world. I have a razor-thin mobile phone; I call it my anorexic communicator. My first cell phone was 9 ounces and resembled a military walkie talkie. I also have a lap top and a Blackberry. But, no big deal – there are over 800 million personal computers world wide. I am in constant touch with my office, clients and other counsel no matter where I go. Of course, they are also in constant touch with me. Making decisions in the

back of cabs, in airports and on trains are every day occurrences. Smoking cars on trains have been replaced by quiet cars. The good news is that all this technology makes me incredibly more productive. The bad news is that I am a hostage to my technology. Walk up and down the halls of law firms, and you will see lawyers staring at screens. Outside the office, with laptops and Blackberrys, it is a 24/7 illness. We have created Blackberry addicts, and addiction is hard to lick. We are afraid to be out of touch, fearful that decisions will be made without us. So with head down and thumbs pounding, we feel compelled, day and night, to pursue our addiction with gusto.

Another challenge is the sparseness of think time. So much rapidly crosses the screen so often, sometimes requiring immediate responses to important questions not just in a matter of hours, but often in minutes. Yes, this technology makes us more productive, but it can also compel us to compress time and accelerate decisions when more time is really needed to make thoughtful judgments. We no longer have the excuse that the mail has not arrived yet.

Professionals usually fear what they are missing and this acceleration of decision-making is especially challenging for lawyers who prefer a measured pace to be sure they do not miss anything. I wholeheartedly embrace these technological advancements; it is consistent with the enormously productive business climate of our nation. I like making decisions, but I feel at times accelerated decision-making risks overlooking the critical issues that need to be identified. You have to know when to say hold it, I need more time.

Sometimes, it is also just good to get away from it all and to recharge our mental batteries which can easily wear down when we stay too long on the information highway.

## Congressional Influence

Another constant change that impacts what we do is congressional oversight. We practice bankruptcy law under a statutory scheme. Amendments are expected. On occasion, we who care about legislation have been successful in influencing those changes. But, Congress is a political animal. When a process attracts pressure for change from numerous constituencies, we can expect that congressional politics will sometimes override another solution that we practitioners may think is more sensible. In other words, at times the congressional fix may be worse than the problem being addressed.

Recent amendments to the Code are questioned and remain under scrutiny. My view is that there is no sense griping about it. It is a time to bring creativity to by-pass questionable amendments, see what works and what does not work by testing it with the courts. Judges must appreciate and be sensitive to creative lawyering to test any new law that appears to do more harm than good. If Congress has burdened us with what appears to be improvident legislation, we have to move on and try to find a better way through legitimate challenges and alternative proposals that will benefit the case.

For example, in recent fraud cases, to avoid what was perceived to be the harmful appointment of a trustee, we out flanked the law by substituting chief restructuring officers or similar professionals keeping a trustee out of the process. If executive compensation programs are weakened by Congress, alternatives will be tested and sometimes prevail. If a proposed structure goes too far, courts will find you pushing the envelope. Some efforts have failed; others have succeeded. We lawyers should continue to pursue alternatives to painful legislative changes. Complaining is never a cure.

What we do today and in the coming few years may prompt changes in the next major overhaul that may not be to our liking. We who care about this practice must be vigilant to congressional oversight and the potential for intervention . As we will always live under a congressional umbrella and its political storms, we will constantly be challenged to bring our creativity to the courts when the legislative fix is questionable.

### Street Game

A third area of change is the street game. Protracted bankruptcy cases have a host of constituencies competing for the remaining wealth of a troubled company. In today's legal battlefields, major street wars are being played out not by the entities who initially extended credit to the troubled company, but mainly by entities who buy claims hoping for greater returns. In a number of instances, the purchase is to leverage opportunities for takeovers and to realize the full potential of the upside after the Chapter 11 is confirmed.

Under bankruptcy law, classification is by claims not by claims purchasers. By the end of a number of Chapter 11 cases, the holders of claims did not initially extend credit to the debtor, but assumed a risk by buying a claim from a creditor. The claims purchaser substitutes its goals which can impede the troubled company's ability to control the reorganization highway.

With players in some cases aggressively pushing for margins and leverage, bankruptcy litigation appears to have substantially increased. Indeed, within the same class of creditors, players may be fighting with each other over plan distributions especially when some have bought high and others have bought low. Ad Hoc Committees are in vogue as different purchasers seek a combined independent voice. Certainly, leverage through litigation has played some role in our process for time out of mind. It is just that in the current street game, with available litigation bench strength in so many law firms, litigation as a strategy appears more

prolific and expensive, especially in large cases. If aggressive litigation is part of the street game, there is a word of caution.

If you do some research you will find phrases in court opinions like: “overzealous advocacy” and “overly aggressive attorneys”; or fees representing “an extraordinary amount of money”; expectancy that creditors will “exercise restraint on expenses”; and fees that are “not cost justified.” These phrases and observations are not confined to any single court. They are warning signals to practitioners. I have also been involved in unreported cases where fees are quietly reduced at the court’s urging. In my judgment, we are likely to see more and not less judicial pronouncements if bankruptcy judges are frustrated with costly litigation tactics that push the envelope. When the pendulum swings too far and the cost of the process appears out of line, the courts will ultimately take hold and pull things back to the center; if not, you can be sure that Congress will.

Even without judicial or congressional intervention market forces are already influencing the Chapter 11 process. Some troubled companies try to by-pass what is perceived to be arduous Chapter 11 relief. Recent reports highlight a growing trend to turn back to state court relief, especially for smaller businesses in distress. Remarkably, assignments for the benefit of creditors have returned to the front burner in some states. And, is it my imagination, but aren’t we also experiencing more liquidations even when Chapter 11 is used? The human and financial costs of a likely Chapter 11 war may make state court relief or a quick sale more appealing. I submit to you that the changes affecting the Chapter 11 street game may be corrosive to the traditional use of Chapter 11 as a vehicle to reorganize.

## Cross Border Issues

My last item of change is a commentary on how business expansion beyond U.S. borders affects what we do and will do in our daily practice. More and more companies today have a global presence, and if they go under, will likely generate cross border issues. Indeed, even Congress has recognized the need for intervention by recently passing Chapter 15 of the Bankruptcy Code, specifically enacting solutions to address cross border complexities.

The American College of Bankruptcy now has 39 foreign Fellows performing insolvency work throughout the world such as Central and South America, Japan, New Zealand, South Africa, Austria, Germany, England, France and Canada.

It is noteworthy that China, a nation long ruled by man, recently passed a new bankruptcy law. As China shifts more and more to a market economy and addresses laws to protect property rights, perhaps in the near future we will induct a Fellow from China.

American law firms are addressing what human and financial resources they will allocate to foreign operations. According to a survey last year, seventy-seven percent of the Am Law top 100 firms have at least one foreign office. Expansion to Western Europe and beyond in the 80's and 90's was quite dramatic. Today Asia is brought into close focus. There are now 35 American law firms in Tokyo, 34 in Hong Kong, 23 in Shanghai and 23 in Beijing. We even have 6 U.S. law firms in Vietnam. You know a war is definitely over when the lawyers show up. Other locations in Asia are seeing the entry of American law firms. All of these statistics do not reflect further growth in 2007. If you do open a foreign office you will also be competing with foreign law firms as well. Indeed, I have seen some statistics that suggest there are now 135 foreign law firms in China.

If you travel 5 hours by air from Hong Kong and make that your radius, within your circle will be 50% of the world's population. Singapore, Hong Kong and Shanghai are now the 3 busiest ports in the world. American business clients will go where money can be made and Asia is becoming a hot trail to follow. Service providers, like accountants, lawyers, financial and investment advisors follow international business expansion. We as professionals must develop internal talent, elevate our knowledge and direct our focus to this exploding international commerce and its affect on the insolvency practice. It will continue to expand and pervade our professional lives. There is pressure externally from our clients and internally in our firms to expand our horizon lines beyond U.S. borders.

Pitch a case at a beauty contest, and the existence of your foreign office at a troubled debtor's foreign business location may tip the scales in your favor.

### Conclusion

The combination of technology changes, new legislation, new rules for the street game and expansion of cross border issues are merely four areas of change that will surely continue to challenge our management skills and daily professional lives. I have not even addressed the impact of law firm mergers, lateral movement, lawyers leaving the profession, management challenges of running the modern day law practice or the seasonality of bankruptcy filings.

Change is inevitable. It is not something to fear, but should be anticipated. However, as I have pointed out, change often comes with a price, whether in our professional life or personal life, and managing the burdens can be quite challenging.

Throughout it all, however, I urge my colleagues at the Bar to stick to the basics. To maintain our collegial approach requires consistent effort. Civility and respect for our profession, for an opponent, for the court and the judicial process continues to be our mandate.



No matter what changes we encounter in running the machinery of American law, we owe it to ourselves and our profession to maintain standards of excellence and to commit to do the right thing for the future of our profession, the cases we handle and the constituencies we represent..

When I reflect on all the changes I attempt to manage, and focus on what is needed to fuel my passion for being a bankruptcy lawyer, I am at least soothed by the words of an old song that: “Today will become tomorrow’s good old days.”