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Foreward

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FOREWORD

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The decision by the Board of Editors of the Mississippi College Law Review to publish a bankruptcy symposium issue is a timely one. In the boardrooms of American businesses and the kitchens of American families, more and more people are talking about bankruptcy; more and more people are deciding to file bankruptcy petitions. This increase in bankruptcy filings is in part attributable to world, national, and local economic changes, in part attributable to changes in business and society and in business and societal values, in part attributable to changes in the bankruptcy law.

It is important to keep in mind that our bankruptcy laws are relatively new laws—that the present bankruptcy laws are, for the most part, the result of legislation originally passed in Congress in 1978 and amended in 1984 and 1986. The legislation commonly referred to as the Bankruptcy Reform Act of 1978 or the Bankruptcy Code,[1] became effective in general for cases filed on or after October 1, 1979. This legislation offers new and enhanced reorganization opportunities for consumers and for businesses.

Because of the increases and changes noted above, more and more lawyers and law students are involved with bankruptcy laws.

In the 1970's, bankruptcy law generally was of concern only to those relatively few lawyers who specialized in that area of practice—most lawyers had no understanding of or need to know about bankruptcy concepts such as "summary jurisdiction" or about bankruptcy cases such as *Lewis v. Manufacturers National Bank.*[2] In the 1980's and 1990's, there are not only significantly more lawyers specializing in bankruptcy law but significantly more general practitioners conversant with bankruptcy concepts such as the "indubitable equivalent" requirement discussed in Neil Olack's article[3] and with leading

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1. It is probably misleading, if not inaccurate, to use the phrase "Bankruptcy Code" to describe all of the legislation. In 1978, Congress not only amended the substantive law of bankruptcy, title 11 of the United States Code, but also made changes in courts, title 28 of the United States Code. "Bankruptcy Code" more properly refers only to title 11.

2. 364 U.S. 603 (1961).

3. Olack, *The Asset Payment Plan: Satisfying the Indubitable Equivalent Requirement*, 10 MISS. C.L. REV. 21 (1989).

bankruptcy cases such as *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*,[4] discussed in Pat Scanlon's article.[5]

The changes in law school mirror the changes in practice. In the 1970's, most law schools offered a single, one-semester course that covered both bankruptcy and state collection law. And typically, twenty to thirty students would enroll for such a "creditors' rights" course. In the 1990's, many law schools are offering not only separate bankruptcy courses but also advanced courses dealing with Chapter 11. And, these courses are often heavily subscribed.

I do not mean to suggest that I applaud or endorse the increase in bankruptcy filing, the changes in business and societal values or the changes in bankruptcy laws. As a practicing attorney who represents primarily secured creditors, I generally work to avoid bankruptcy – a bankruptcy filing by one of my client's debtors is rarely good news for me or my client. The articles in this symposium issue will help me and my clients and you and your clients deal with that "news." I commend these articles to your reading pleasure.

I especially commend to your reading pleasure, the following different and more poetic view of bankruptcy expressed by the late William J. Rochelle, Jr., a leading bankruptcy lawyer. At the March, 1990, midyear meeting of the National Bankruptcy Conference,[6] he wrote the poem that Carl Sandburg would have written had he been a bankruptcy judge:

BANKRUPTCY COURT

Lien Buster for the Nation,
Nemesis of the IRS.
Player with Railroads, Manville, Texaco.
Stormy, husky, brawling,
Court of the big muscle but tender conscience.

They say you fail to stamp out wickedness forever,
and I believe them, for I have seen
painted women released to sing
their siren songs, again to cause the wreck
of failure on the hidden rocks of green.

And they tell me you coddle crooks, and I
answer Yes, I have seen con men
return to con again.

And they tell me you can be brutal when you
dash the hopes of moms and pops and
little people with claims you cannot pay.
And I say "Yes, but they won't let me
manufacture money."

And they sneer that your revival efforts often
fail of purpose, and that's true.

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4. 484 U.S. 365 (1988).

5. Scanlon, *Adequate Protection and Secured Creditors' Strategies After* Timbers, 10 MISS. C.L. REV. 59 (1989).

6. The National Bankruptcy Conference is an organization of judges, lawyers, and law professors whose professional interest is bankruptcy and reorganization law. The membership, totaling about 65, is representative of the various constituencies normally involved in cases under the Bankruptcy Code. The principal purpose of the Conference is to seek the improvement of bankruptcy law and practice through the review of existing and proposed legislation and rules.

And having answered so I turn once
more to those who sneer at this
my court, and give them back
the sneer and say to them.

What other court or other Nation tries
so hard to give fresh start to honest
debtors, still spread what's left
as fair as can be fair;

Who works as hard at saving jobs for
wages to be earned tomorrow?

And what if an occasional painted woman
scrapes through the net to sing once more
her siren song? At least the scraping
may have peeled away some paint and left her
warts of ugliness exposed so we
will not again be so easily seduced.

And while the crook may con again, he cons without
his debts discharged.

And what if some revival efforts fail
or fall short of ultimate success?
Are we worse for having tried
to save a job, or a business, or
a city? Is the graveyard of
business failure fuller sooner
than it would have been without
the effort? Or what if sometimes
hope must be its own lone reward?

We still must
Try,
Struggle,
Plan, Negotiate,
Make every honest effort
To create and recreate, and still be
Lien Buster to the Nation
Nemesis of the IRS, and, even if
rarely, sometimes rescue both borrower
and lender from the consequences
of their own greed and stupidity.

William J. Rochelle, Jr.[7]

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7. William Rochelle received both his undergraduate degree and law degree from George Washington University (B.A., 1938; J.D., 1940). After distinguished service as a captain in the Second World War during which he received the Bronze Star, Silver Star, Croix de Guerre, as well as the Distinguished Unit Citation, he entered private law practice in Dallas, Texas in 1946. Eventually, he joined the Weil, Gotchal and Manges Dallas firm where he remained until his death. In 1962 he received the State Bar of Texas President's Award, the group's highest award to an individual lawyer. He became a member of the National Bankruptcy Conference in 1945. In 1966, he tried and won the seminal bankruptcy tax case in the Supreme Court, *Segal v. Rochelle*, which was codified in the Bankruptcy Reform Act of 1978. He was a contributing editor to the leading bankruptcy treatise *Collier on Bankruptcy* and was a contributing author for the *Collier Bankruptcy Practice Guide*. He served as adjunct professor at the Southern Methodist University, University of Texas, and Texas Tech University law schools. Mr. Rochelle's writings on bankruptcy sometimes took the form of poetry. The poem contained in this volume was written not long before his death.