

3/18/16

I was deeply honored when Mike Cook asked me to present the Distinguished Service Award to my friends, Henry Sommer and Jay Westbrook. I could not think of anyone who is more deserving of this special award than Henry and Jay. And, on a personal level, you will never find two nicer gentlemen who are so well-liked by their peers.

I will be presenting the awards individually – first to Henry and then to Jay.

Henry Sommer has devoted his entire career to public service. After graduating from Harvard Law School in the 1970s, Henry devoted his legal talents to helping the poor at Community Legal Services in Philadelphia (he served as the head of the Consumer Law Project of that organization for more than 20 years). Henry is now the Supervising Attorney

at the *pro bono* Consumer Bankruptcy Assistance Project in Philadelphia. But Henry also has represented the interests of consumer debtors on a national scale by assisting debtors' counsel in litigation and writing amicus briefs in cutting-edge cases around the country, and by testifying at Congressional hearings and before the National Bankruptcy Review Commission.

My first experience working with Henry was in connection with his work as a member of the National Bankruptcy Conference. His extraordinary expertise on consumer bankruptcy issues has been invaluable to that organization for more than three decades.

In 1991, Henry was appointed by Chief Justice Rehnquist to serve as a member of the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the

United States. Henry was extremely influential in formulating and amending the Federal Rules of Bankruptcy Procedure so that they better serve the interests of consumer debtors.

Henry also participates in many programs to educate lawyers and judges on consumer bankruptcy law. He frequently lectured at Federal Judicial Center seminars for bankruptcy judges and at the annual meetings of the National Conference of Bankruptcy Judges. A few years ago, the NCBJ honored Henry with its prestigious “Excellence in Education Award.”

Henry has also been an extremely effective organization builder and leader. He helped form, and served as President, of the National Association of Consumer Bankruptcy Attorneys (commonly referred to as NACBA), which started

with a handful of lawyers in 1992 and today, with more than 4,000 members, is the most highly-respected and influential voice for the rights of consumer debtors. It conducts high-quality educational programs, supports pro bono programs, and makes its voice heard on Capitol Hill.

And Henry is the President of another organization that he helped form only five years ago-- the National Consumer Bankruptcy Rights Center – which provides assistance to consumers by either working directly with debtors’ counsel or by filing amicus briefs in courts throughout the country. Henry’s influence in elevating the quality of the consumer bankruptcy bar -- through his pioneering efforts in those two organizations alone -- is truly extraordinary.

Henry also influenced the development of consumer bankruptcy law through his publications. His book,

***Consumer Bankruptcy Law and Practice*, co-authored with College Fellow John Rao, is a leading publication in the field. For decades, Henry has served as a contributing author of *Collier on Bankruptcy* and, since 2003, Henry has been an editor-in-chief of all *Collier* publications, and I am personally grateful for that.**

As this nation's most prominent and influential voice for consumer debtors, and for his extraordinary dedication to the improvement of consumer bankruptcy law, Henry is especially deserving of this honor. It is my pleasure to present the 2016 Distinguished Service Award to Henry J. Sommer.

Jay Westbrook

Jay Westbrook, a member of the faculty of the University of Texas Law School for more than 35 years, is one of the nation's most distinguished teachers and scholars in the bankruptcy field. Jay has received numerous awards for excellence in teaching, including the "Excellence in Education Award" of the National Conference of Bankruptcy Judges, and the University of Texas Law School's "Outstanding Teacher Award." He is a most extraordinary and dynamic teacher and if you have never had the privilege of observing him teach at a professional seminar, you don't know what you're missing! He is a "must see" teacher!

Jay has been an active and invaluable member of many professional organizations, such as the National Bankruptcy

Conference and the American Law Institute - and he was a Senior Advisor to the National Bankruptcy Review Commission.

Jay's scholarship has focused on many diverse areas of bankruptcy – from consumer issues to complex international business issues. And in his scholarship, Jay has never been satisfied relying on anecdotal evidence or gut feelings – No, Jay prefers to rely on actual experiences, data from cases, and, as such, he became a pioneer in the area of empirical research.

One of his earlier contributions was his award-winning book, *As We Forgive Our Debtors*, co-authored with Elizabeth Warren and Theresa Sullivan, which was a product of 7 years of gathering and studying a quarter million pieces of information about consumer debtors and

their creditors found in files of actual bankruptcy cases – that information, coded and fed into a computer, provided the first accurate picture of consumer bankruptcy cases based on actual experiences. He then co-authored *The Fragile Middle Class: Americans in Debt*, another enormously valuable empirical work, in which thousands of consumer bankruptcy dockets were analyzed to demonstrate the impact of job instability, divorce and family instability, and the costs of medical care, on the financial fragility of the middle class.

And Jay’s scholarship is as courageous as it is diverse – he challenges long-held assumptions and returns to a fundamental examination of underlying issues. As just one example, his well-known article on executory contracts written in 1989 offered a functional alternative to Vern

Countryman's widely-accepted definition of executory contracts, and then, more than 25 years later, after the ABI Commission recently reaffirmed the Countryman definition, Jay just last month published another article urging a more modern approach to that very complex area of the law – one that rejects the very concept of “executoriness” of contracts. Jay's scholarship is deeply thought-provoking and highly praised by the academic community.

But perhaps Jay's most significant contributions were in the area of cross-border insolvency law. In addition to writing on cross-border cases, Jay served as co-chair of the U.S. Delegation to the United Nations Commission on International Trade Laws (UNCITRAL), where he played a key role in developing the model Law on Cross Border Insolvency, which became our chapter 15 of the Bankruptcy

Code and also was enacted in many countries around the world. Yes, it is fair to say that Jay is one of the Founding Fathers of chapter 15. He also served as the U.S. Reporter for the American Law Institute's Transnational Insolvency Project, and as a director of the International Insolvency Institute, and is now a consultant to the International Monetary Fund and the World Bank.

As a brilliant teacher and one of the most influential and highly-respected bankruptcy scholars of his generation, Jay is especially deserving of this honor. It is my pleasure to present the 2016 Distinguished Service Award to Professor Jay Lawrence Westbrook.