Distinguished Service Award Remarks
March 16, 2012
Patrick A. Murphy

Thank you, Harvey. You are the dominant figure in our field. Also you are a most promising new movie star. It is a great honor to be here with you and to hear your kind and creative remarks. It is a great pleasure to see so many people with whom I have worked over the years — in legal matters, in legal education and in improvement of the law. There are far too many of you to name individually but I do want to mention my wife Gail, my long time partners Peggy Sheneman, Randy Rogers, and Kip Maly, and Matt Botica, a partner in our Chicago office – all of whom are here tonight. There are two colleagues, no longer with us, who, as mentors, were particularly meaningful to me in my career: Peter Coogan – professor, writer, and lawyer and Barney Shapiro – a wise man and great lawyer.

An insolvency practice was the last thing I had in mind when I completed law school. Bill Laube, Steve Riesenfeld and Larry King all taught creditors remedies at Boalt Hall when I was a student there. However, it did me little good because I didn't take a course from any one of them. In due time I came to know each of them well. Years later Bill Laube became a valued counsel to my firm, I authored an article in an issue of the California Law Review honoring Steve Riesenfeld, and Larry King became a writing and CLE colleague. However, that was all in the future. Initially my interests were politics and international law. Then I joined the Bank of America Legal Department and soon found myself doing bankruptcy work.

In short order I discovered a few things. I liked bankruptcy law. Bankruptcy law was immediate rather than gradual. Matters were often resolved in weeks rather than in years. Procedural matters often had a very substantive effect. Bankruptcy law involved a specialty court with Referees, later Bankruptcy Judges, who expected you to know what you were talking about, who had seen similar issues in previous cases, and who had often developed a point of view. Insolvency law by definition almost always involved a situation where there were not enough assets to go around, which encouraged settlements.

An early lesson for me was that in California the business of agriculture was a world of its own. A Bank officer complained bitterly to me that the Bank had been the victim of a false financial statement – false because it failed to show a lease obligation. I moved for an order finding that the financial statement was false and that the Bank had relied on it. At the hearing on our motion in the Fresno Bankruptcy Court, I was busily showing falsity and reliance and thought I was in good shape. Then the Bankruptcy Judge, Eckhart Thompson, requested that counsel approach the bench. He inquired whether it was the Bank's position that this was a net crop lease – payable only if there were net proceeds from the crop. When I admitted that it was, he said: "Well I don't want to prejudge the matter, but it's my opinion that any landlord who signs a net crop lease should have a conservator appointed."

Showing I was catching on, I said that if the farmer would tell us where he had hidden the tractor – that would resolve matters. A deal was struck, justice was done, and a lesson was learned. Sometimes a false financial statement claim may be simply a cover for poor credit judgment.

Among major changes that have occurred during our careers has been the emergence of women as professionals in the legal and business world. Progress has been made but there is still a way to go to shake some ingrained assumptions.

In an involuntary case in New Mexico, the alleged debtor hit upon the idea of paying all the petitioning creditors except for our client. The debtor's questionable legal theory was that our client would then be unable to satisfy the statutory minimum number of petitioning creditors. The alleged debtor had not yet learned that paying off less than all the creditors of an insolvent debtor was the equivalent of chumming for sharks. One had best have a plan for what to do when more sharks arrive, particularly if you are running out of chum. The notice of the hearing on the motion to dismiss revealed the payments to the petitioning creditors. The predictable result was some forty plus would be intervenors. The alleged debtor's counsel soldiered on, examining would-be intervenors to establish that they really didn't have a claim or didn't understand what they were doing. The highlight of the hearing was the examination of a young woman who owned a small mapping company. She admitted that she really hadn't read the papers but had given them to her husband to read. The witness was asked whether she had any reason to think her husband would understand the matter any better then she did. Her response was: "I sure hope so, because I put him through law school."

A valuable part of my legal career was participation in Continuing Legal Education programs. The preparations for a program and the discussions with fellow panelists like Peter, Barney and Harvey were exceptional learning experiences.

An early CLE program I remember was with Peter Coogan in San Francisco. Peter believed that rehearsing questions and answers with fellow panelists was a form of short changing the audience. During our program, Peter spun a complex hypothetical to make a point and then asked me a question. I totally flubbed the answer. That night I hit the books and did better when Peter asked me a question the next day. At the end of the program my heart soared when Peter said "you know, you are beginning to think this through." That was high praise from Peter Coogan.

I learned to appreciate the value of open and unrehearsed discussions and taking questions from fellow panelists, while not trying to cover too much. As Barney Shapiro once put it, when criticized for not covering some small issue on preferences: "I'm not going to take the law of preferences, wad it up into a ball, and roll it toward the audience!"

Again, I want to give my thanks to the College, to Harvey, and to all of you for this exceptional honor.