

INTRODUCTION – JUDGE CAROLYN DINEEN KING

I am honored this evening to present The American College of Bankruptcy's Distinguished Service Award to our fellow, The Honorable Carolyn Dineen King, a Circuit Judge on the United States Court of Appeals for The Fifth Circuit. This award is presented annually for significant accomplishments in improving the administration of justice in the insolvency and bankruptcy field; for distinguished service consistently rendered; and to a recipient who has distinguished himself or herself in a manner consistent with the goals and purposes of the College. Judge King more than satisfies those requirements.

Judge King was born in Syracuse, New York. She attended Smith College, where she was a philosophy major, graduating summa cum laude and Phi Beta Kappa. She then attended Yale Law School, with an emphasis in federal tax law.

Both of her parents as well as her brother and sister were all lawyers – there must have been something pretty remarkable going on in the Dineen household as she was growing up. She is married to her fellow Court of Appeals member, Judge Tom Reavely, and has three children and two grandchildren.

After graduating from law school, Judge King became a very successful corporate and securities lawyer in Houston. I first worked with her when Stratford of Texas, a major corporate client of hers, had to file a Chapter 11 proceeding. I realized fairly quickly that I was dealing with someone who managed to be blindingly smart, tremendously hardworking, direct and extremely unpretentious—all at the same time. Throughout her career, she has had the rarest of all qualities – the ability to take her work – but not herself – extremely seriously.

She was appointed to the Fifth Circuit Court of Appeals by President Carter in 1979 and has served there for the past thirty-five years, including serving as Chief Judge of the Fifth

Circuit for seven years. She has stated publicly that she initially declined to be considered for the appointment, believing that as a non-litigator she had little to offer and also that she preferred her corporate and securities practice. Fortunately, she reconsidered.

Her tenure on the Fifth Circuit has been distinguished in every respect. She has authored more than 6,000 opinions that have been cited by other courts innumerable times. As a mark of the esteem in which she is held within the federal judiciary, she was appointed by the Chief Justice of the Supreme Court to serve on the Executive Committee of the Judicial Conference of the United States, and she chaired that committee from 2002 until 2005.

It is daunting to attempt to describe Judge King's opinions. They are consistently recognized as models of careful legal scholarship, balanced judgment, humanity, and, at times, flashes of humor. One cannot readily characterize her bankruptcy decisions as pro-creditor or pro-debtor – they are simply clear, thoughtful explications of the law that balance the rights of the parties in light of the language of the statute.

As a fortunate coincidence for bankruptcy law, Judge King took the bench in 1979, literally at the moment that the Bankruptcy Code was becoming effective. Some of you in the audience will recall that the drafters of the Code said explicitly that it was intended to embody a broad set of general principles and that it would be left to the nation's bankruptcy judges and appellate judges to apply the broad principles embodied in the Code to specific factual situations.

Those comments by the drafters of the Code anticipated what Judge King has done since taking the bench: I believe it is fair to say that no sitting appellate judge has written more searchingly than has Judge King about the fundamental questions at the heart of the Bankruptcy Code. Where do the respective rights of debtors and creditors begin and end? How does one

balance the desire of creditors for the speedy resolution of a Chapter 11 case against the aspiration of the Code to facilitate the reorganization of viable businesses?

It is probably not possible to single out Judge King's most influential bankruptcy opinions. I would simply note with a high degree of confidence the fact that the members of the American College of Bankruptcy have become familiar with an astounding number of opinions written by Judge King. They include such cases as Timbers of Inwood Forest (unanimously affirmed by the Supreme Court.); In re Vitro; Eubanks v. FDIC; Matter of Howe; Transtexas Gas Corp.; and Louisiana World Exposition v. Federal Ins. Co., to name but a few. These and other opinions speak to issues of *res judicata*, jurisdiction, federal and state comity, case management, fiduciary duty, the interplay between the tax and bankruptcy codes, fraudulent transfer questions, and issues that arise when a foreign corporation seeks to avail itself of the protections of US bankruptcy law, to name but a few of the many areas of bankruptcy law on which she has written.

The impact of Judge King's decisions has been magnified by the way in which she uses the narrow facts of a particular case to create teachable moments, both for practicing attorneys as well as for other courts. As she noted in an often-cited passage in Timbers of Inwood Forest, "Early and ongoing judicial management of Chapter 11 cases is essential if the Chapter 11 process is to survive and if the goals of reorganizability, on the one hand, and creditor protection, on the other, are to be achieved... [E]ach bankruptcy judge is called upon to manage the cases in front of him, fairly and impartially, in such a way as to promote their orderly and prompt disposition. The difficulty in ascertaining where the line is to be drawn cannot be an excuse for a judge's abdication of his responsibility as a judge."

Judge King has long recognized the unique nature of bankruptcy and the implications that holds for courts. In one case, she confronted a request by one party for dismissal of an appeal from a decision of the bankruptcy court. She noted, “A district court shall keep in mind that some infractions of the rules of bankruptcy procedure are harmless and do not merit dismissal; the dismissal unfairly punishes clients for mistakes of their counsel in some cases; and that the primary goal of courts as enforcers of the bankruptcy rules should be to insure the swift and efficient resolution of disputes pertaining to distribution of the bankruptcy estate.”

As these and numerous other quotations from her opinions demonstrate, Judge King often uses the facts of a specific case to remind the parties of the underlying nature and purpose of the Bankruptcy Code. In so doing, she provides a timely reminder to all restructuring lawyers of what it is that we are about in our chosen field.

Separate and apart from her distinguished career on the Court of Appeals, Judge King has been an active and meaningful participant in the civic, educational and humanitarian life of her community and other communities as well. She currently serves as Vice Chair of the Board of Trustees of Baylor College of Medicine. She is a past Chair of the Board of Trustees of the University of St. Thomas. She has served as a Trustee of the Hermann Hospital Estate and of the United Way of the Gulf Coast. She has been a member of the Cullen Trust for Higher Education and a member of the Board of Advisors of Syracuse University College of Law. She also has served as a member of the Visiting Committees of the University of Chicago and Southern Methodist Law Schools. She currently serves on both the Council and Executive Committee of the American Law Institute, where she was an advisor both with regard to the Restatement of the Law of Torts as well as the Transnational Insolvency Project.

Judge King has been widely honored. The American Bar Association has awarded her its Margaret Brent Award, given to an outstanding woman attorney who has paved the way for success by other women lawyers. There is no doubt that for decades she has been both an inspiration and mentor to countless women lawyers. And, in her own chambers, nearly half of her 132 law clerks have been women.

She also has received the highest award given by the Federal Judiciary, which is the Edward J. Devitt Distinguished Service to Justice Award. The citation bestowing that award referenced “her almost legendary ... devotion to [her circuit’s needs]” and her “leadership of the Executive Committee of the [U. S.] Judicial Conference” as “the single most important figure in the [federal] judiciary, ... guiding the courts through the financial crisis of the last several years.” Smith, her alma mater, has awarded her its College Medal, which is the highest honor Smith gives for public service. Likewise, both Syracuse University and the University of St. Thomas have given her honorary degrees.

Tonight, in recognition of her seminal judicial role in the explication of the Bankruptcy Code and her countless contributions to charitable, educational and health-related organizations, the American College of Bankruptcy is honored to present to Judge Carolyn Dineen King its Distinguished Service Award. Please join me in congratulating Judge King.