

**PRESENTATION OF THE 2006 DISTINGUISHED SERVICE
AWARD FROM THE EMORY BANKRUPTCY
DEVELOPMENTS JOURNAL**

*Senator Tom Daschle**

I am delighted to introduce tonight's recipient of the *Emory Bankruptcy Developments Journal* Distinguished Service Award for Lifetime Achievement, a dear friend, and a true public servant: Senator Dennis DeConcini. This honor is a major award in the bankruptcy community and is presented annually to those who have made significant contributions and provided exemplary leadership. This is the first time in the Award's history that it has been presented to an individual elected to public office.

Senator DeConcini faithfully served this country and the state of Arizona as a Senator from 1977 to 1995. I was honored to serve with him, and learn from him, for eight years in the Senate. In fact, Dennis was the first sitting Senator to campaign for me in my first race for the House in 1978!

Senator DeConcini was born in Tucson, Pima County, Arizona in 1935 and graduated from the University of Arizona in 1959. After graduation, he served in the U.S. Army and then graduated from the University of Arizona Law School in 1963. Senator DeConcini began his career in public service soon after graduating from law school. He served as a member of Arizona Governor Samuel Pearson Goddard, Jr.'s staff from 1965 to 1967. Sadly, Governor Goddard passed away last month. After his service for Governor Goddard, Senator DeConcini became a founding member of the firm of DeConcini McDonald Yetwin & Lacy, P.C. He also served as Pima County attorney from 1973 to 1976. In 1976 he was elected to the first of three terms in the U.S. Senate.

Senator DeConcini has a long list of accomplishments from his years in the Senate: he valued innovation and supported the technology sector; he fought to protect children from drugs by writing the Anti-Drug Abuse Act of 1988 which pressured source countries to do more to stop the trafficking of drugs to America; he understood the importance of oversight, particularly as chairman

* Senator Daschle served in the U.S. House of Representatives from 1978 to 1986 and the U.S. Senate from 1986 to 2004. He established New Leadership for America in 2005, a public action committee, and is currently a Special Policy Advisor at Alston & Bird, LLP, a Distinguished Senior Fellow at the Center for American Progress, and a visiting professor at the Georgetown Public Policy Institute.

of the Senate Intelligence Committee and in his service on the Judiciary Committee and the Appropriations Committee; he worked hard to protect children by establishing the National Center for Missing and Exploited Children and has received numerous awards for his leadership in child abuse prevention; and he was known as an effective legislator made especially clear by his successful work to find a compromise on the controversial Panama Canal Treaty.

While the list of Senator DeConcini's accomplishments is long, we are here tonight to focus on his efforts to improve our nation's bankruptcy laws and processes. It has long been recognized that an efficient and fair bankruptcy system is critical to an effective marketplace. Nations around the world recognize this and continue to look to the U.S. Bankruptcy Code for guidance. In this way Senator DeConcini's extraordinary contribution lives on.

Senator DeConcini was instrumental in drafting the 1978 legislation which has shaped today's bankruptcy community. The Bankruptcy Reform Act of 1978 was long in coming; it was the first major reform of bankruptcy law since the passage of the Bankruptcy Act of 1898. He was chair of the Senate Judiciary's Subcommittee on Improvements in Judicial Machinery during the years leading up to passage of the historic legislation. He served as the floor leader for the Senate in the negotiation and passage of the Act. During the drafting process he and his committee heard testimony from over sixty witnesses including Georgia's own Griffin Bell, who was the U.S. Attorney General at the time.

Senator DeConcini faced many obstacles in crafting the legislation. Most notable were significant disagreements on the establishment of the bankruptcy courts and the administration of the bankruptcy system. Chief among these concerns was the status and power to be given to the bankruptcy judges.

Supreme Court Chief Justice Warren Burger opposed the efforts to increase the power of bankruptcy judges. The Chief Justice personally called Senator DeConcini, threatening to seek a veto of the Act. Dennis was not deterred. He rejected the efforts of the Judicial Conference of the United States chaired by Chief Justice Burger. Senator DeConcini drew a line in the sand and informed his House counterparts that the Act would be doomed to fail absent the strengthened role of bankruptcy judges. The House concurred in the Senate's amendments and the Bankruptcy Reform Act was passed by both Houses of Congress. The Chief Justice, true to his word, sent a letter to President Carter asking that the President veto the Act. The letter read in part:

To create 215 bankruptcy judgeships that are not needed, and which the Judicial Conference has unanimously disapproved, is wholly unjustified. To put it bluntly, it stems from the desire of those officers who were initially appointed to office as bankruptcy referees and who serve as adjunct aides to District Judges to achieve a higher status, with virtually all but the status of “life tenure” judges—almost like promoting all the Army’s Sergeants Major to Captain rank!

The Chief Justice’s letter did not persuade President Carter, who signed the Bankruptcy Reform Act into law at the last possible moment on November 6, 1978. If the President had waited several more hours, the legislation would have had to start anew in the new session of Congress. Perhaps Senator DeConcini can take some comfort in the fact that the Chief Justice later switched sides. The Chief Justice, who had fought so very openly against the status of bankruptcy judges and their jurisdiction, argued in his dissent in the landmark *Marathon* case that the jurisdiction of bankruptcy judges was constitutional and that Congress acted within its constitutional power when it created the bankruptcy courts.¹

Senator DeConcini remained active in bankruptcy legislation after the passage of the Act. He was one of the earliest supporters of the American Bankruptcy Institute (“ABI”) and was instrumental in the development of that organization, including in the months that followed the Supreme Court’s decision in *Marathon* which put the very legality of the bankruptcy courts’ jurisdiction in jeopardy.² Senator DeConcini became the honorary chair of the ABI in 1985 and helped to increase the ABI’s membership and its influence in this field. He also sponsored the Intellectual Property Bankruptcy Protection Act of 1987 which helped stabilize intellectual property rights in bankruptcy. Finally, he cosponsored the legislation that gave protection to shopping center landlords when a tenant filed for bankruptcy. Senator DeConcini’s comments to the Senate during these various pieces of bankruptcy legislation have been cited by numerous law journals and at least thirteen times by the United States Supreme Court. There is not a single provision of the Bankruptcy Code that has not benefited from Senator DeConcini’s expertise.

Since retiring from the Senate, Senator DeConcini has remained active in the bar, the community, and in many important public policy matters. He continues to practice with his law firm DeConcini McDonald Yetwin & Lacy,

¹ See *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 92 (1982) (Burger, C.J., dissenting).

² See *id.*

P.C. and is also a member of the legislative consulting firm Parry, Romani, DeConcini & Symms. As with his career in the Senate, his efforts with these organizations have focused on several causes important to everyday Americans. For instance, his consulting firm, representing the Autism Society of America, was instrumental in the reauthorization of the Individual with Disabilities Rehabilitation Education Act in 2004. And in 2004, he was named Chairman of the Board of Directors of the National Center for Missing & Exploited Children.

It is with great pleasure and pride that I present to you tonight a great statesman, a public servant, a fighter for our nation's underprivileged, and a wonderful ally of the bankruptcy profession, Senator Dennis DeConcini.