

**PRESENTATION OF THE 2007 DISTINGUISHED SERVICE
AWARD FROM THE EMORY BANKRUPTCY
DEVELOPMENTS JOURNAL**

*Judge David S. Kennedy**

This indeed is an auspicious occasion. I am most honored to introduce a dear personal and professional friend, highly respected judicial colleague, and authentic and dedicated leader in the bankruptcy world as the recipient of the 2007 *Emory Bankruptcy Developments Journal* Distinguished Service Award for Lifetime Achievement: the Honorable W. Homer Drake, Jr. As you know, this is a highly prestigious award that is presented annually to a deserving individual who has made significant and lasting contributions to the bankruptcy community and also has significantly contributed to the unique and specialized field of bankruptcy law that we are privileged to know and appreciate.

Since the 1970s, in America, numerous and fundamental changes in the nation's bankruptcy laws have occurred. Judge Drake is a nationally recognized and highly distinguished member of a special elite class of jurists who have insightfully and thoughtfully guided us through an endlessly fascinating, difficult, and complex period leading up to the ultimate passage of the Bankruptcy Reform Act of 1978, the greatest bankruptcy bill ever enacted in American history.

Judge Drake is a Georgia-boy who has grown to become a widely and highly respected local, and esteemed and recognized national figure in the legal profession including the world of bankruptcy. The basis for this statement is set forth in the dedication found in Professor David Epstein's *Bankruptcy in a Nutshell* book; and I quote:

To: Judge Conrad Duberstein of Brooklyn and Judge W. Homer Drake, Jr., of Newnan—Two of my heroes and heroes for anyone who does bankruptcy law work and is Jewish or Southern or, best of all, both.

* Prepared and presented by David S. Kennedy, Chief U.S. Bankruptcy Judge for the Western District of Tennessee.

As a guidepost for what brought us to the current day, indulge me as I briefly recount Judge Drake's biography and provide you with a bit of background information about our esteemed and special friend, colleague, and honoree. He was born in Colquitt, a small southwestern Georgia town in 1932. After graduating from Mercer University in Macon, Georgia, with a Bachelor of Arts in 1954, he matriculated and proceeded swiftly through the Mercer University School of Law to obtain his law degree in 1956. Upon his graduation from law school, Judge Drake served in the United States Army as a First Lieutenant in the JAGC for three years. He then entered private practice for a time with a law firm in Macon, Georgia. Prior to being appointed a bankruptcy referee under the former Bankruptcy Act on September 1, 1964, Judge Drake also served from 1961 to 1964 as a Law Clerk to the Honorable Judge Lewis R. Morgan, United States District Judge for the Northern District of Georgia.

Judge Drake chose to reenter the world of private law practice in 1976 after having successfully served as the chief bankruptcy judge for the Northern District of Georgia for eight years. In 1976, W. Homer Drake, Jr., Esquire, became a partner with the distinguished Atlanta Law Firm of Swift, Currie, McGhee and Hiers. However, after three years in a highly lucrative private practice, the lure of the bankruptcy bench and public service became too professionally strong, and Judge Homer Drake returned to the judiciary, being reappointed to the bankruptcy bench by the United States District Court for the Northern District of Georgia. On May 20, 1985, Judge Drake was appointed to a fourteen-year term by the Eleventh Circuit Court of Appeals in accordance with the provisions of 28 U.S.C. § 152 under the 1984 restructuring amendments.

Because of his prior judicial appointments including his subsequent fourteen-year reappointment by the 11th Circuit Court of Appeals in 1999, Judge Drake is in a distinguished class of highly experienced and recognized jurists who have led the nation's bankruptcy community for over a quarter of a century through complex, substantive, and difficult political times and accompanying multiple jurisdictional and substantive law and procedural changes. In addition, as a national leader in the field of bankruptcy, Judge Drake has served as past President of the National Conference of Bankruptcy Judges. He was appointed by the Chief Justice of the United States Supreme Court to serve for seven years (1989-1995) as a highly distinguished and respected member of the United States Judicial Conference Committee on the Administration of the Bankruptcy System (aka the "Board of Directors" of the

bankruptcy system). Judge Drake also is a Fellow of the American College of Bankruptcy.

Judicial and related services are not the only attributes that describe and define the Honorable W. Homer Drake, Jr. His sound leadership and unparalleled integrity also touch the many extrajudicial aspects of community service that he renders off the bench. Being a dedicated and loyal alumnus to his alma mater, Judge Drake has served as a past President of the Mercer Law School Alumni Association and also Chair of the Law School Board of Visitors. He was honored in 2003 with the Mercer Law School Outstanding Alumnus Award. He currently serves on the Mercer University Board of Trustees and has recently been appointed the Chairman of the Athletic Committee of the Board of Trustees charged with guiding the University to an even stronger and more nationally recognized athletic program, an effort that I know is very close to his heart—but more on that in a moment.

Judge Drake's academic and pedagogical involvements are not solely and exclusively the asset of Mercer University. He additionally has served as an Adjunct Professor at Emory University School of Law and the University of Georgia School of Law, and also has authored three popular books and many scholarly articles too numerous to mention here (*e.g.*, he is the author of the treatise entitled *Chapter 11 Reorganization* that he co-authored with one of his former law clerks, Christopher S. Strickland, Esquire). His unselfish community efforts have been recently recognized and honored by the Atlanta Bar Association when he was awarded the first David W. Pollard Achievement Award. More recently, on February 28, 2007, Judge Drake was recognized and honored with the prestigious Atlanta Bar Association Leadership Award which is presented to members who inspire by their example, challenge by their deeds, and remind us all of our debt to our profession and communities.

In seeking to further the legal education of bankruptcy practitioners, law professors, and judges, Judge Drake was the original founder of and currently serves as an Advisor to the highly acclaimed Southeastern Bankruptcy Law Institute (SBLI), a foremost organization responsible for conducting one of the nation's best continuing education seminars on an annual basis. Not only is this successful nonprofit organization tasked with educating practicing attorneys and judges at its annual seminars, funds generated and realized from these seminars are donated by the SBLI to law schools throughout the southeast to foster and enhance their bankruptcy law programs. For example, his association with the Southeastern Bankruptcy Law Institute resulted in a

\$302,000 gift that was made to establish the *Walter Homer Drake Professorship of Bankruptcy Law* at Mercer University's Walter F. George School of Law in 1997. Most recently, in February of this year, the SBLI generosity has culminated in the *Southeastern Bankruptcy Law Institute/W. Homer Drake, Jr. Endowed Chair in Bankruptcy Law* at Mercer University's Walter F. George School of Law.

Now back to Judge Drake's extrajudicial involvement in athletics. As loyal as he is to Mercer University, there is rarely a week when the college football and basketball seasons are in full swing that Judge Drake does not strongly support the "other Georgia school" that is so close to his heart—the University of Georgia and its Bulldogs. He also is somewhat of a silent supporter of Georgia Tech, as many in this room already know. I am confident that his recent appointment as Chairman of the Athletic Committee on the Mercer University Board of Trustees will greatly benefit the Board, the University, and its alums. Judge Drake's passion for the sports at all these Georgia institutions and the athletes who compete on behalf of all of these programs is a grand foundation for building the national profile and reputation of the Mercer University athletic program. Judge Drake is a true and loyal Georgia fan of all these outstanding universities and their athletic programs in this great State.

Let us not forget that in the world of bankruptcy the most respected and distinguished judges are also some of the greatest individuals and leaders of our society. This leadership characteristic undoubtedly begins with Judge Drake's family. He was lucky enough to convince the lovely Ruth Bridges to become his bride and together they have brought two wonderful sons, Walter and Taylor, into our world. Judge and Mrs. Drake are currently blessed with five grandchildren. Judge Drake's family is a loving and supporting base and nexus which, I believe, helps him draw the inner strength necessary to "deal with people and issues with integrity while genuinely caring for the individual."¹ He is a true gentleman in all respects. Never having met a stranger, Judge Drake has an uncanny ability to meaningfully communicate with anyone on practically any subject matter in such a way to make that person feel comfortable and unintimidated by his obviously powerful, but yet unassuming intellectual and personal presence.

In preparing for these remarks about Judge Drake, I sought the wise counsel of numerous national "titans" in the bankruptcy world who know

¹ Comment of Professor Michael Sabbath, Interim Dean of the Mercer University Law School, upon the occasion of the award of the 2003 Outstanding Alumnus Award to Judge Drake, March 21, 2003.

Judge Drake. I would like to share just a few specially selected remarks with you now. For example, the Honorable Conrad Cyr, Senior Circuit Judge for the First Circuit Court of Appeals, had this to say:

. . . our mutual friend and colleague is most deserving of the high recognition he is about to receive.

Judge Drake was an able and productive activist in the bankruptcy law reform effort which culminated in the enactment of the Bankruptcy Reform Act of 1978: the legislative vehicle which finally established the independent judicial office of United States Bankruptcy Judge, while bringing about the most important (and now well time-tested) structural and substantive bankruptcy law reforms in our history.

A somewhat more detailed account of two incidences of Judge Drake's impact on the world of bankruptcy was related to me by the Honorable Joe Lee, U.S. Bankruptcy Judge for the Eastern District of Kentucky:

The Bankruptcy Rules Committee had completed many years of work on the Bankruptcy Rules that included language that promoted referees in bankruptcy to bankruptcy judges. These Rules had been transmitted to Congress with the recommendation that they take effect on October 1, 1973.

Here is where a great contribution by [Judge Drake] occurred. The Senate Judiciary Subcommittee on Constitutional Rights, which was to consider the rules, was chaired by Senator Sam Ervin of North Carolina. He was a former trial court judge and was preoccupied by the Rules of Evidence, which were in line for approval ahead of the Bankruptcy Rules. (You may recall Senator Ervin was also named to chair the Senate Select Committee to investigate presidential campaign affairs (the Watergate affair)). Through Senator Herman Talmage of Georgia, [Judge Drake] obtained a meeting by a delegation of bankruptcy judges who were able to persuade Senator Ervin the Bankruptcy Rules were noncontroversial and should be permitted to take effect as recommended by the Supreme Court. I think it fair to credit [Judge Drake] with greasing the wheels of government in a manner that permitted the new rules to take effect on time.

The second example provided by Judge Lee further details Judge Drake's efforts in the bankruptcy reform movement in the 1970s, a critical time in the historical development of American bankruptcy law:

The 1973 annual meeting of the NCBJ was held October 31 through November 3, 1973 at the Hyatt Regency Hotel in Atlanta Several figures who were critical to the enactment of the 1978 Bankruptcy Code were at the meeting. [In addition,] Jimmy Carter, who was then Governor of Georgia, spoke at a luncheon meeting. This was before he had announced his intention to run for President.

Griffin Bell, who was then on the Fifth Circuit Court of Appeals [prior to the split that designated that Georgia was in the Eleventh Circuit] was in attendance.

Senator Herman Talmage was our dinner speaker. The Commission on Bankruptcy Laws of the United States had issued its report in July of 1973 recommending that all bankruptcy cases, except reorganization cases, be filed with an administrative agency, to be known as the Bankruptcy Administration, with a right to appeal to a bankruptcy court. We were encouraged by Senator Talmage's statement in his speech that he had serious reservations about "splitting the administrative functions away from the Judicial Branch of Government."

Several of us . . . spoke in opposition to the administrative idea.

Several years later, on February 15 and 16, 1975, representatives of the NCBJ and NBC (which was generally supporting the Commission Bill) met in Homer's courtroom in the old federal building in Atlanta and worked out most of the differences between the Commission Bill and the so-called Judges' Bill. We had been advised by Congressman Don Edwards, Chairman of the House Judiciary Subcommittee, that we needed to work out our differences in order to obtain passage of the legislation. The Judges' Bill, which left bankruptcy administration under the jurisdiction of the bankruptcy courts, in other words, left the bankruptcy court system in place, prevailed.

After the bill was passed by the House and Senate, Chief Justice Warren Burger wrote a letter to President Carter urging him to veto the bill.

It was Griffin Bell, noting that the bill had been approved by the American Bar Association, who persuaded President Carter to sign the bill before midnight on November 6, 1978 at Camp David.

A final set of specially selected remarks that I would like to share with you come from Dean Lawrence ("Larry") Ponoroff of the Tulane Law School, which I believe very accurately characterize the thoughtful and extraordinary gentleman that Judge Drake truly is:

What is perhaps less well-known, and what I feel quite qualified to speak to, is [Judge Drake's] contribution to the careers of so many in our field. Over his many years on the bench, [Judge Drake] has quietly served as a mentor, confidant, and friend to a long list of individuals, myself included, in the early stages of their careers. Never seeking anything in return, and without great fanfare, when [Judge Drake] encountered someone who he thought had potential, he quietly worked behind the scenes to create opportunities for that person to allow them to advance in the field.

At the time when I was at the University of Toledo and not extensively published or well-known, I met [Judge Drake] while I was serving as a reporter on the Long-Range Planning Subcommittee of the Committee on the Administration of the Bankruptcy System. To this day I am humbled and flattered that [Judge Drake] saw something in me and the next year I received an invitation to the faculty of the SBLI that I know had [Judge Drake's] fingerprints all over it. The exposure and contacts that I made on that and subsequent invitations to SBLI faculty have played an instrumental role in opening doors for me and in developing whatever reputation I enjoy today in the field. In short, [Judge Drake] was willing to take a chance on me when others were not. [Judge Drake] kept track of my career, offered support whenever and wherever he could, and became a friend. He and Ruth opened their home to me when I visited Newnan, introduced me to barbeque at Sprayberry's, and generally extended warmth and hospitality whenever my travels brought us together.

I thank Judges Cyr and Lee, Dean Ponoroff, and others for their insightful and thoughtful comments about Judge Drake. I believe that their input further illustrates the scope of Judge Drake's sincerity of public service and unquestioned dedication to the world of bankruptcy and the individuals and organizations therein. Without the keen insight of these bankruptcy "titans," some of the foregoing important historical information and human interest stories would not be known or told as Judge Drake never boasts of or broadcasts his good deeds and accomplishments. Instead, he silently performs his duties and responsibilities and concomitantly achieves his goals in a graceful and dignified manner, never taking credit for the important and lasting key roles that he has played.

Judge Drake has spent countless number of hours over the years positively assisting and greatly impacting the bankruptcy bench and community including the lives of many individuals; and even with that, he still looks forward to reporting for his judicial work on a daily basis. Finding his judicial work

enormously stimulating and gratifying, the job continues to be a labor of love for him. Actually, he still enjoys his judicial chambers and courtroom work as much today as when he first started. We greatly admire and respect his unforced enthusiasm regarding, for example, America's bankruptcy laws and his community.

Judge Drake has made a meaningful and positive difference and significant enduring contributions during his career—and more such contributions will follow in the future. He is a *de facto* ambassador of the legal profession and his community. In reality, we are the true beneficiaries of all his outstanding and remarkable personal and professional endeavors and contributions, and we are much the better for it—as is the bankruptcy system as a whole. Undoubtedly, Judge Drake deserves this Distinguished Service Award for Lifetime Achievement. It is our honor to recognize, honor, and congratulate him.

In closing, please allow me to additionally say that I have never met an individual with such relaxed intelligence, thoughtful charm, dedication to public service, and unselfish mentorship of others. Judge Drake is a genuine source of inspiration by example. When all is said and done, it is abundantly clear that Judge Drake, simply put, is just one of those special human beings that seemingly pass, much too infrequently, through our lives here on earth. Understandably, we carefully listen when this extraordinary and highly credible person speaks. Of course, we greatly appreciate all that he has done for us as individuals and also the bankruptcy system as a whole. Although Judge Drake, as noted earlier, is a recognized silent giant in the field of bankruptcy—never looking for recognition or trophies for his outstanding efforts—nonetheless, what he has accomplished for us and the world of bankruptcy does not go unnoticed or unappreciated. For obvious reasons, we thank Judge Drake; and we also profusely thank Mrs. Drake (a.k.a. Ruth), his role model spouse, and their sons, Walter and Taylor, for unselfishly sharing the Judge with us over the years.