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PROFESSOR MORRIS SHANKER

Hon. Marilyn Shea-Stonum†

Reflecting on the career of Case Western Reserve University’s (“CWRU”) John Homer Kapp Professor of Law Morris G. Shanker gives me the opportunity to say thank you to a scholar who, I have come to realize, was not only an excellent teacher but also a considerable force in defining the U.S. commercial legal system. As a bankruptcy practitioner and now as a bankruptcy judge, I have functioned in this system throughout my legal career and gained increasing insight into his influence on commercial and bankruptcy laws in the United States, contributions that swell far beyond the CWRU lecture halls.

When I first enrolled in Professor Shanker’s Secured Transactions course as a second-year law student, I lacked any perspective on the significance of the subject matter and any realization of how privileged CWRU students were to be studying with someone who was present at the sculpting of significant portions of the Uniform Commercial Code (the “UCC”). By the end of the course, I had a dim understanding of the enormous contribution that the UCC brought to the stability of U.S. commerce and law. This stability was the goal and the accomplishment of Grant Gilmore and a small tribe of theorists and draftsmen, including Prof. Shanker, who worked through the American Law Institute to produce and then polish the UCC through amendments in 1972.

Appropriate to his subject matter, Prof. Shanker’s teaching style was straightforward and not littered with war stories of the innumerable debates that had to be settled in amending the UCC.¹ Instead, he recognized that his assignment in the classroom was to immerse his students in the UCC’s structure and provisions. He certainly succeeded in impressing on us the UCC’s central importance

† Chief Judge, United States Bankruptcy Court for Northern District of Ohio.
¹ One could get some sense of that if you stuck around after class.
to the work of any practicing lawyer. On a few occasions, he might note an article that he had authored on one significant topic or another, but his lasting gift as a teacher is the clarity he brought to the provisions of the UCC and the legal environment that it created.

Ironically, I did not take his bankruptcy course before I graduated in 1975. Five years later when I was on maternity leave from my emerging practice in commercial litigation and bankruptcy, I had the good sense to cure that omission by auditing Prof. Shanker’s bankruptcy course. By then I had some first-hand experience with bankruptcy or, as I have come to regard it, the acid test for commercial transaction structuring. The delay afforded me the opportunity to get his perspective on the newly enacted Bankruptcy Reform Act of 1978 (the “Bankruptcy Code”).

Prof. Shanker’s mastery of the Bankruptcy Code was grounded in his significant work from 1965 through 1976 on the Advisory Committee on Bankruptcy Rules of the United States Judicial Conference (the “Rules Committee”), first as an assistant reporter and then as a Rules Committee member. The significance of this work comes into sharpest focus when one recognizes the pivotal role that the Rules Committee played in resolving conflicts between the Bankruptcy Rules and the 1898 Bankruptcy Act. Specifically, from 1964 until the effective date of the Bankruptcy Code in late 1979, Congress took the unprecedented step of providing that, in conflicts between the Bankruptcy Rules and the 1898 Bankruptcy Act, the Bankruptcy Rules would trump the 1898 Bankruptcy Act. Congress took this action to allow the creation of rules that would streamline existing bankruptcy practice and proceedings. Thus, the Rules Committee provided something of a dress rehearsal for the complete rewriting of federal bankruptcy law that was finally enacted in 1978.

Not only did Prof. Shanker have input through the official forum of the Rules Committee, he was also a member of the National Bankruptcy Conference (“NBC”). Being invited into the NBC is

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2 He has published over 40 scholarly articles and seven book chapters in the fields of commercial law, creditor-debtor law, and bankruptcy. His extensive publications have been widely cited in scholarly articles and by various courts, including the United States Courts of Appeal for the Third, Sixth, Seventh, and Eighth Circuits; numerous district and bankruptcy courts; and by the highest courts of several states, including Ohio.


arguably the highest honor that can be bestowed upon a member of the bankruptcy community, though the invitation imposes considerable responsibilities. The NBC limits its membership to approximately 75 academics, judges and practicing lawyers. The NBC analyzes any proposed changes to federal bankruptcy law and offers its considered opinion to Congress. Additionally, through small working subcommittees, it continually monitors the effectiveness of the Bankruptcy Code. In short, Prof. Shanker was part of a small cadre of practicing theorists whose ideas have been translated into state (UCC) and federal (the Bankruptcy Code) legislation that is the core of the transparent system of commercial rights in the United States. This system has gained worldwide respect because it permits business to be conducted with efficiency and fairness. When countries with emerging economies seek technical assistance from the United States court system, as frequently occurs, the leading request is for assistance in developing such transparent systems. To do so, countries look to the UCC as a model for creating transparency in the validity and priority rights in various forms of personal property. To begin to instill confidence in the global markets, they then work to develop enforcement bodies that will enforce equally the rights of all commercial parties, whether local or foreign. It is thus absolutely fair to note that the lifetime passion for

5 In the mid-1980’s, I learned just how intensely NBC members worked. Together with my then colleague David Sloan, I served as counsel to an industry coalition seeking an amendment to the Bankruptcy Code to end the uncertainty that had been cast upon the viability of intellectual property licenses. This uncertainty was caused by a circuit court holding that treated an IP license as an executory contract in the licensor’s chapter 11 case and arguably viewed rejection as terminating the continued use rights of the licensee. Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc., 756 F.2d 1043 (4th Cir. 1985), cert. denied sub nom. Lubrizol Enters. v. Canfield, 475 U.S. 1057 (1986). As we worked with Senators Dennis DeConcini, Charles Grassley and Howard Metzenbaum and Representative Don Edwards, each wanted assurance from the NBC that the fix we were proposing was necessary and consistent with sound bankruptcy policy. The NBC members assigned to that project worked voluntarily and tirelessly, meeting with both the coalition members and congressional staff to address many issues not immediately apparent on the surface. The resulting legislative enactment, the Intellectual Property Bankruptcy Protection Act of 1987, quickly and quietly averted loss of confidence in the U.S. system of licensing of intellectual property. While the NBC did not assign Prof. Shanker to that particular working committee, he was our great cheerleader. Winning his admiration and approval in that process meant a great deal to me.

fair and stable commercial principles and laws that Prof. Shanker has pursued has radiated around the world.

Some have suggested that Prof. Shanker eats, breathes and dreams commercial transactions. I can add some evidence to support that contention. In the spring of 1977, I was practicing in Los Angeles and signed up for a continuing education course on mechanics and materialmen liens. The program drew several hundred lawyers to a large, windowless auditorium in downtown Los Angeles. As I looked to a far corner of the auditorium, I spotted someone in a sports jacket of that particular shade of peacock blue that Mrs. Shanker used when she tailored Prof. Shanker’s duds. When I walked over to that corner, there was Prof. Shanker, purportedly on vacation in southern California, dropping into this CLE event with one of his ALI buddies. He sure knows how to have a good time! Given that level of interest and dedication, I can only wish Prof. and Mrs. Shanker years of wonderful retirement and thank him for all that he has done both in the classroom and in the world of applied policy.