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***History of the American College of Commercial Finance Lawyers***  
**April 28, 2016**

*In the early 1990s, Maury B. Poscover (President 1995-96), David S. Willenzik (President 1993-94) and Ernest Bland Williams III (President 1991-93) founded the American College of Commercial Finance Lawyers to honor commercial finance lawyers who are both excellent practitioners and have contributed to the profession. The College commissioned this history to memorialize its development, its activities and achievements, and the contributions of its Fellows to the practice of commercial finance law. We hope you enjoy this historical tour and that it triggers happy memories for those who have been active in the College's formation and growth.<sup>1</sup> We also hope that it will provide a background to guide the future activities and growth of the College.*

***Organization: 1990-1992***

*“...to create an entity that gave recognition, not only to those who were good lawyers in the field of commercial finance, but who contributed to the profession and to their communities”*

The American College of Commercial Finance Lawyers was preceded by the formation in 1982 of the Commercial Financial Services (now Commercial Finance) Committee of the American Bar Association (ABA) Section of Business Law (BLS). As Maury B. Poscover recalls, “A group of us were sitting around over drinks. Someone said, ‘Boy it sure would be nice for there to be some place for us to get together and share our ideas, what we’re doing, how to

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<sup>1</sup> Because the College's records are incomplete, there may be gaps in this history, and we regret any omissions or errors. We invite Fellows to contact the current Secretary of the College c/o the College at [accfl.admin@dgallc.net](mailto:accfl.admin@dgallc.net) with additional information or to provide copies of any records they may have for the College archives.

get better at what we do.’” One of the lawyers at that gathering, William M. Burke, who chaired the BLS Uniform Commercial Code Committee, agreed. Burke made a presentation to the BLS governing council, which led to the founding of the Commercial Finance Committee. Poscover remembers that it was among members of that Committee that “this idea of the College percolated.”

As Robert A. Zadek explains, most of the lawyers who became active in the Committee had come of professional age during what he calls “magical times.” “The [Uniform] Commercial Code had just been adopted, which allowed for all kinds of financial instruments that didn’t exist before. . . . We were, I felt—we lawyers in our 20s and 30s—doing stuff that had never been done before. We didn’t know it at the time. We were just being lawyers. But it turns out in hindsight that we were doing cutting-edge stuff because the law was all new and it was so well done that it allowed for new kinds of products, which benefitted the borrowers, benefitted the lenders, benefitted everybody.”

At a 1990 BLS meeting, a gathering was held by special invitation to what David S. Willenzik recalls were “outstanding lawyers” in the then relatively small world of commercial finance practice. The meeting led to a decision to form a professional society—a college—for commercial finance lawyers that would emulate honorary societies set up by practitioners in other areas of legal practice, such as the American Colleges of Trial Lawyers, Trusts and Estates Counsel, Real Estate Lawyers, and Bankruptcy. “We were copycats,” Willenzik says. Yet imitation was not the only impetus for forming a college for commercial finance lawyers. “There was another purpose too,” Willenzik adds, “and that was to expand the basis of the membership of the ABA Commercial Finance Committee. . . . The reason we were there and the reason we all knew one another was through the ABA, and it was somewhat a giveback to the ABA.”

The “we” Willenzik refers to were himself, Ernest Bland Williams III, and Maury B. Poscover, the College’s co-founders.<sup>2</sup> Poscover recalls that the genesis was during a Commercial Finance Committee meeting or dinner. “Ernest Williams, David Willenzik, and, I believe, Carl Lobell, might have been part of that conversation.”

After Willenzik, Poscover, and Williams agreed that the idea for a college had merit, they met several times to discuss the mission of such an organization and how they could make the idea a reality. “[We] were talking about a desire to create an entity that gave recognition, not only to those who were good lawyers in the field of commercial finance, but who contributed to the profession and to their communities,” Poscover says. For Willenzik, “To be a member of the College, you have to be one of these super lawyers who is constantly doing good things.”

It was decided early on that the College’s members would carry the title of Fellows to indicate the collegial nature of the organization. To find such Fellows, the co-founders consulted

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<sup>2</sup> Brief professional biographies of the College’s three co-founders are attached as **Appendix 1**.

with a number of professional colleagues, including future Fellows Earl A. Glick, Howard Ruda, Earl F. Leitess (President 2001-02), Donald J. Rapson, and Lee D. Powar (President 2005-06). Ultimately, Willenzik says, each co-founder compiled a list of 30 or so names, and those on two or more lists were invited to join. About 60 “outstanding lawyers” received the first invitations to join the College. The formation of the College was announced in the March/April 1992 issue of BLS’s Business Law Today.<sup>3</sup>

The College’s certificate of incorporation<sup>4</sup> was filed December 13, 1990 in Tennessee. The organizational meeting took place on April 13, 1991 in Williamsburg, Virginia in conjunction with the BLS spring meeting that year. Attendees included Glick, Leitess, Lobell, Poscover, Powar, Rapson, Willenzik, Williams, and Zadek, plus Thomas L. Ambro, John D. Berchild Jr. (President 2003-04), J. Truman Bidwell, Jr., Robert C. Colton (President 1998-99), James J. Cunningham, Harvey C. Guberman, David G. Heiman, and Harry C. Sigman. Bylaws were adopted and officers elected. Williams became the College’s first president<sup>5</sup>—a position he would hold through 1993—with Poscover as Secretary and Willenzik as Treasurer. The initial Board of Regents consisted of Bidwell, Colton, Heiman, Leitess, Lobell, Powar, Rapson, and Ruda, plus C. Edward Dobbs (President 1996-98), Donald Lee Rome, A. Bruce Schimberg (President 1994-95), and Francis C. Suarino.

On August 8, 1991, Williams wrote to the College’s Board of Regents to submit a list of nominees for additional Fellows. “Please keep in mind,” Williams wrote, “that this is supposed to be an exclusive group in which membership is to be highly valued.”

E. Carolan Berkley (President 2000-01) was one of the nominees listed in Williams’s letter. She had been active in the ABA BLS Commercial Finance Committee since picking up an ABA publication and spotting a blurb regarding the Committee’s formation. “I thought, ‘Oh, gee, this looks like it’s right up my alley,’” Berkley says of her involvement in the Committee. “It would be a good way to get to know other people, to know what’s going on in the industry, and it really was.” Berkley recalls a time when it was rare to see other women lawyers working in commercial finance. “Since then,” she says, “I’ve been in a room where all of the clients have been female, and maybe one or two lawyers were male.”

In 2000 Berkley became the College’s first woman President. Though she initially questioned whether she deserved to be nominated, she decided “[I]t’s time for women, and if I’m

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<sup>3</sup> A copy of the announcement is attached as **Appendix 2**. As of College’s 2016 Annual Meeting, the College had 256 Fellows, of whom 56 are women, and includes Fellows from Canada and Mexico.

<sup>4</sup> The original filing named the College as “American College of Commercial Lawyers, Inc.” The name was changed to American College of Commercial Finance Lawyers, Inc. in 1999.

<sup>5</sup> A list of the College’s presidents is attached as **Appendix 3**.

the beneficiary of that, so be it.” Besides, Berkley adds, “I was not shy about working on ... ABA project[s], just speaking up, so people knew me.” Though Berkley had become accustomed to seeing more and more women practice commercial finance law, she nevertheless appreciated the vote of confidence. “Clearly it makes you feel valued to have people from much larger financial centers deciding that this is something that is appropriate for you.”

By December 1991, the College had developed a statement of standards for membership, including:

- Membership would be limited to lawyers “actively engaged in commercial finance legal work as a significant part of their practice,” though membership “shall not be limited to simply one field of commercial practice.”
- Fellows must be “lawyers ... who have not only achieved preeminence in the field but who have also helped others in the field by sharing knowledge, by writing or by putting together outstanding programs.”
- Geographic distribution of membership would not be limited.”<sup>6</sup>

The College held its inaugural meeting of Fellows on April 10, 1992 in conjunction with a meeting of the Business Law Section in Orlando, Florida. There were approximately 60 Fellows, including three women—Berkley, Amelia H. Boss, and Judith Lalka Dart.

### ***Growth and Purpose: 1993-2003***

*“In any organization like this, you’re constantly struggling to define yourself.”*

For Earl Leitess, “What I remember of those first nine or so years [was]... the seriousness with which the Fellows of the College approached the thought of what should the College be. ... What can we do for the College to be worthwhile beyond merely congratulating one another on allegedly being the best? ... What validity can we have from the standpoint of improvement of the law?”

Bob Zadek thought that an organization such as the College might be able to encourage law schools and students in the study of commercial finance law. “[W]e had in the College—and in the broader sense active in the American Bar Association—lots of unbelievably good and talented commercial law professors.” Zadek’s hope was “to make this area of law exciting.”

As Carolan Berkley puts it, “In any organization like this, you’re constantly struggling to define yourself. Are you going to do programs? What are you going to do? We struggled with that.”

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<sup>6</sup> Today the College opens membership to lawyers licensed to practice law in the United States, Canada, or Mexico.

### **The Grant Gilmore Award<sup>7</sup>**

At its April 1993 meeting, the College inaugurated its Grant Gilmore Award to encourage and recognize scholarship in the field of commercial law by younger lawyers who were not Fellows. (Later, the award would be broadened to recognize commercial law scholarship generally.) The award took its name from the noted law professor Grant Gilmore, author of *The Death of Contract* and one of the main forces behind the drafting of Article 9 of the Uniform Commercial Code. Bob Zadek says that Gilmore's 1965 book *Security Interests in Personal Property* "was the book that all of the drafters of the [Uniform] Commercial Code had memorized." The two-volume book, Zadek says, is even today "required reading. I have a copy on my desk." The first Grant Gilmore Award was given to Kerry Lynn Macintosh, a professor at Santa Clara University School of Law, for "three outstanding articles in the area of commercial finance law published in 1992." Earl Leitess sees the Gilmore Award as one of the College's greatest contributions. "I think that was an outstanding use of time and energy of the member of the College and the few dollars that it would cost us to give an honorarium and to bring people to our annual meeting."

### **Homer A. Kripke Lifetime Achievement Award<sup>8</sup>**

With the Gilmore Award aimed at younger lawyers, the College decided to also reward lifetime achievement. David Willenzik wrote to inform Homer A. Kripke that, in "recognition of your lifetime achievements in the field of commercial finance law," Kripke would be the first recipient of the College's Lifetime Achievement Award, which would henceforth bear his name. Willenzik's letter added that in future the award would be given "to a senior member of the Bar" whose contributions to the field of commercial finance law mirrored Kripke's own. "We hope that you will accept the College's award in the spirit of gratitude in which it was given," Willenzik wrote to Kripke.

At the College's 2011 annual meeting, Leonard H. Gilbert (President 1999-2000) explained why the College's lifetime achievement award had been named after Kripke, citing Kripke's importance, both in terms of his legal knowledge and in the role he played in the Uniform Commercial Code's formation. "In the mid-1960s, when the UCC was being adopted throughout this country, hundreds of lawyers flocked to New York to attend the special one-week session of the Practising Law Institute to hear Homer Kripke tell us what we needed to know about the UCC."<sup>9</sup>

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<sup>7</sup> A list of winners of the Gilmore award is attached as **Appendix 4**.

<sup>8</sup> A list of winners of the Kripke award is attached as **Appendix 4**.

<sup>9</sup> Professor Kripke was interviewed in 1989 about the development of the UCC by the American Law Institute; that interview can be viewed at <https://www.youtube.com/watch?v=of-m979pR8o>.

Bob Zadek recalls that his own interest in commercial finance law dated back to law school when he took courses from Kripke. “Professor Kripke instilled in me this love of this body of law that I never stop being excited about to this day,” Zadek says. And when he listened to Kripke lecture, he adds, “It was like I got the Tablets from God in law school.”

Zadek also recalls the ceremony at which Professor Kripke was given the Kripke Award: “Homer Kripke was at that time ... in a nursing home. ... [S]o ... Ed Smith [(President 2002-03)] brought from home his videotape camera to tape the presentation ... in a conference room in a law firm ... in Philadelphia.... ‘Ceremony’ is a little bit grand because there were 12 of us. It’s called a ceremony. Those of us who wished were invited to speak into the camera, because this videotape was going to be presented to Homer Kripke so he could see the video tape recording of the awarding of the Homer Kripke Award. I recall telling Professor Kripke, through the camera lens and with deep emotion, ‘Professor Kripke, how do I thank the person who gave me my entire life?’ That he did for me.”

In 2011, when he would receive his own Kripke Award, David Willenzik recalled that, thanks to Donald Rapson, he was able to avoid “a truly embarrassing *faux pas*.” When William B. Davenport was to be named as the inaugural Homer Kripke Achievement Award winner, Willenzik said, “I was not aware that Homer was still living (he died in February 1995), and we quickly scrambled to give the first Homer Kripke Award to Homer and the second to Bill.”

In 1999, Donald Rapson received the Kripke Award. Speaking of Rapson, who passed away in 2007, Earl Leitess paid the late Fellow a special tribute that says a lot about the personal value of College membership. Even though he and Rapson “didn’t always see eye-to-eye on some issues,” Leitess said, the two friends had numerous fruitful discussions over the years. Those discussions, he said, were not limited by time and/or place. “I remember one instance—it was a weekend, I was running my boat in Chesapeake Bay—when Don called, telling me he was sitting on the beach somewhere in New Jersey ... and an issue came to his mind. He would mention the issue and away we would go.” Bob Zadek cites Rapson as a great influence on his own life and career. “He was so profoundly generous with his knowledge and his support to anybody who he thought was receptive to it,” Zadek says. “I just latched on to him throughout my life.”

In 2009, Bill Burke received the Kripke Award. Burke didn’t attend the meeting to accept his award as he was summiting Mount Everest, becoming, at 67, the oldest American to do so successfully.<sup>10</sup>

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<sup>10</sup> See Burke’s story on his website, [www.eightsummits.com](http://www.eightsummits.com). A documentary about Burke’s climbing activities was released in 2013; the trailer and other information can be accessed at <http://eightsummitsfilm.com/>.

## **Alternative Dispute Resolution Projects**

In an October 27, 1993 letter to College Fellows, then-President David Willenzik reported on one of the College's early initiatives, an alternative dispute resolution (ADR) project headed by Bruce Schimberg.

Some 25 Fellows had attended an American Arbitration Association (AAA) training session to prepare arbitrators for disputes involving commercial finance matters. Carolan Berkley says the training session was "one of the best programs I've ever been to. It was phenomenal." Ultimately, however, the ADR project faded away. Zadek suggests that perhaps "there wasn't a demand for that kind of panel." Berkley cites an essential conflict of interest: "It was a great idea, but unless you are retired and totally away from the firm and don't represent lenders anymore, you're not a neutral."

Nonetheless, the College's ADR committee, and especially Schimberg and 2001 Kripke award winner Donald Lee Rome,<sup>11</sup> maintained a long and fruitful relationship with the AAA, most notably in the development of a 44-page booklet, "Resolving Commercial Financial Disputes—A Practical Guide," which appeared in 1998, was amended in 2005, and reissued in 2008. The booklet describes the AAA's Commercial Financial Services arbitration and mediation program, and provides a model mediation and arbitration clause for commercial financial dispute resolution that was developed jointly by the AAA and the College's ADR committee. The committee also assisted the AAA in establishing a national roster of individuals to serve as mediators and arbitrators in commercial finance disputes, and developing qualification criteria and training requirements for those individuals.

Due to the apparent lack of use of the model mediation and arbitration clause for commercial financial dispute resolution by financial institutions, the College decided in 2007 to revisit the topic. College Fellow Thomas J. Welsh was charged with preparing a colloquium of experts in dispute resolution and business finance, including Sandra Partridge (then vice president of AAA), which met at the BLS 2008 spring meeting and again at the ABA Dispute Resolution Section's 2009 spring meeting. The colloquium was intended to broaden the parties involved in the application of ADR to commercial finance beyond the College and AAA, by including ABA Sections and promulgating supplemental rules that would coordinate with other ADR service providers' basic rules. This led to the creation of a joint BLS/Dispute Resolution Section taskforce, chaired by Welsh, with Partridge as vice-chair, to develop model supplementary arbitration rules for commercial finance transactions. The taskforce's final report

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<sup>11</sup> A copy of Don Rome's 2009 article about the use of mediation and arbitration in commercial finance related disputes, the development of model rules and the College's work with AAA can be accessed at:

<http://apps.americanbar.org/buslaw/committees/CL190000pub/newsletter/200907/#fa1>.

was issued in April 2011.<sup>12</sup> At the College’s 2011 annual meeting, then-President Martin Fingerhut (2010-11) noted that the College received “prominent recognition” in the final report, and praised Welsh for his leadership of the project.

### **Appellate Argument and ABA BLS Programs**

At the College’s 1994 spring meeting, Jeffrey Turner proposed that the College sponsor a moot court competition. This initiative came to fruition in the summer of 1995 at the ABA annual meeting, where the College co-sponsored (with the BLS Commercial Finance and UCC Committees) a moot court. The judges included Judge Frank Easterbrook (U.S. Seventh Circuit Court of Appeals), and Douglas Baird, Dean of the University of Chicago Law School. Subsequent moot courts were held at the 1997 summer meeting in San Francisco and the 1999 summer meeting in Atlanta. The 1997 moot court addressed the application of §506(a) of the Bankruptcy Code when a debtor exercised the "cram down" option over a secured creditor's objection and sought to retain and use the creditor's collateral in a Chapter 13 plan. Leonard Gilbert noted in a letter to College Fellows that a highlight of the August 1999 ABA annual meeting was the commercial finance moot court program, which the College co-sponsored with three BLS committees. College Fellow Mark Fisher did an “outstanding job” as chair of the program, Gilbert wrote. The program addressed both security interests in certain intellectual property and rights of competing secured parties.

Eventually the moot court programs ended. As Dave Willenzik recalls, “The judges who judged it, the participants, everybody just thought it was phenomenal, but it was just—if you talk about 1,000 hours of combined time of everybody who was involved, it just wasn’t worth that much [time].”

The moot court programs were replaced with co-sponsorship of other programs at ABA meetings. At the BLS 2003 spring meeting in Los Angeles, California, the College co-sponsored (with the Commercial Finance and Uniform Commercial Code Committees) a program and debate titled “The Bankruptcy Code and Revised Article 9: Will the Marriage Last? A Policy Discussion” with speakers Steve Nickles and Professor David Epstein, moderator Ed Smith and materials provided by Professor Alvin C. Harrell, Professor G. Ray Warner and Ed Smith. The College co-sponsored a 2008 program at the ABA Real Property Section in 2008 titled “Has the Earth Stopped Shaking? The State of the Commercial Financing Markets Since the Subprime Meltdown” at which College Fellow Lee Sher was a speaker. A number of other ABA programs have been co-sponsored by the College.

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<sup>12</sup> The taskforce’s report, model rules, and other materials are available at [www.ABA-Finance-Arb.org](http://www.ABA-Finance-Arb.org).



## **Reflection after the First Five Years**

In June 1997, then-President Ed Dobbs and Fellows Carolan Berkley, Robert Colton, Leonard Gilbert, Bruce Schimberg, Ed Smith, and David Willenzik met as the “Blue Sky Committee” of the College to consider the College’s purpose and future activities. While recognizing that the College was an honorary society formed to recognize the career accomplishments of its members, the committee wanted the College to be more—to provide an opportunity for Fellows to interact with each other and to provide service to the field of commercial finance law.

The committee made several recommendations, of which the most lasting were:

- to expand the College’s membership by including lawyers from Puerto Rico and other U.S. territories
- to add a category of Fellows from non U.S. jurisdictions,
- to make a greater effort to identify “lawyers in corporate settings and who are members of minorities who would meet the high standards for membership,” and
- to have a dinner with a formal induction ceremony honoring new members.

The idea for an induction dinner was not new. Dobbs had previously suggested in a letter to Schimberg that the College “consider a more formal induction ceremony for new members.” Dobbs wrote, “[W]e might want to discuss how to strike a balance between spending our limited resources on purely ceremonial things with creating an appropriate sense of solemnity about the organization and appropriately honoring our new members.” Dobbs’s suggestion initiated a discussion that led to the College’s annual dinner, held in conjunction with the BLS spring meeting, at which new Fellows are inducted.

The annual dinner has developed its own traditions. Carolan Berkley says that Leianne Crittenden (President 2013-14) started the tradition of women Fellows wearing hats to the dinner. Crittenden recalls that she encouraged women Fellows to wear hats initially to provide a visual demonstration of how few women Fellows there were, and then as a way to have fun. According to Berkley, “it became a way to distinguish ourselves, as if we needed it! It sort of continued. It’s fun.” Hats have run the gamut, from vintage designer hats to Mickey Mouse ears, newspaper hats, baseball caps, and tiaras.

## **Reflecting Changes in the Practice of Commercial Finance**

In 2002, the College discussed modifying the membership criteria to reflect changes in financial markets and in the College’s view of what would constitute the practice of “commercial finance” law for purposes of eligibility to become a Fellow. Thomas A. Snow (President 2007-08), then chairman of the Fellows Nominating Committee, presented proposed revisions to the College bylaws so that the definition of commercial finance law was broadened beyond personal property financing transactions to include securitization, equipment leasing, workouts and bankruptcy.

## Article 9 Revisions

In the mid-1990s significant proposed revisions to Article 9 of the UCC were being discussed and drafted. Many Fellows were actively engaged in the revision process, including Professors Charles W. Mooney, Jr. and Steven L. Harris, as Reporters; Bill Burke, as Chair of the PEB Study Group and of the Drafting Committee; Professor William D. Hawkland, as Adviser to the Study Group; Study Group Members John D. Berchild, Barkley Clark, David A. Lander, Darrell Pierce, Don Rapson, Professor Paul M. Shupack, and Harry Sigman; Ed Smith; Richard E. Cherin and Steven O. Weise (President 2004-05) as American Bar Association Advisors; Professor Neil B. Cohen, Rapson, and Sigman as The American Law Institute Representatives; and Smith and Sandra S. Stern as members of the Drafting Committee.

In connection with these Article 9 revisions, Leonard Gilbert reported that “Our Brown Bag Program to carry the message of revised Article 9 to 50 [cities] is off to a good start under the leadership of Jeff Turner.” Turner, who died in 2004 at the age of 48, would receive the 2009 Special Service Award. “We really looked forward to great things from Jeff when, at a very young age, he passed away,” Earl Leitess says.

## Special Service Award<sup>13</sup>

In 2002, the College honored Bill Burke, Steve Harris, Chuck Mooney, and Steve Weise with its first Special Service Award for distinguished service in the development and nationwide enactment of Revised Article 9 of the Uniform Commercial Code.

In 2009, Ernest Williams and Jeff Turner were given the Special Service Award in recognition of their many contributions to the College and continuing legal education in commercial finance law.

In April 2011 Gary D. Chamblee and Richard Brown were presented with the Special Service Award for their leadership in the development of the ABA BLS Model Intercreditor Agreement.<sup>14</sup> Brown accepted the award on behalf of himself and Chamblee, who had passed away in March 2011. Brown cited Chamblee’s qualities in moving terms that reflected the values of the College. “Gary was the ultimate example of the type of leader and public servant of the law that each of us should strive to be. . . . Our practices are extremely demanding, sometimes seeming like we are never ‘off-duty.’ It is difficult to carve out the time to volunteer, to help educate others, and make a meaningful contribution to our jurisprudence. People like Gary are what this organization is all about. Selfless. [A] passion for learning, teaching, becom[ing] better. Better lawyers and better citizens.”

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<sup>13</sup> Additional information about the Special Service Award recipients is include in **Appendix 4**.

<sup>14</sup> The Model Intercreditor Agreement (**MICA**) and related commentary can be accessed at <http://apps.americanbar.org/dch/committee.cfm?com=CL190029>.

## ***Projects: 2004-2016***

The College leadership continued to discuss what the College was and what it should be. As Ed Smith notes, the College “should be doing something more than being a mere fellowship organization.” Kenneth M. Greene (President 2008-09) believes that the College’s chief purpose is “to promote high standards of professional and ethical responsibility” by “sharing matters of importance in the field,” and by recognizing “those who have not only attained a high skill in the field . . . but are willing to share those skills and knowledge in appropriate ways.” At the annual meeting of the College’s Board of Regents in March 2007, at the request of then-President Marsha E. Simms (2006-07), Lynn A. Soukup (President 2014-15) and Sandra M. Rocks outlined possible projects the College could undertake. From this discussion, many of the College’s projects for the next ten years, including the ADR colloquium project that began in 2007, were born.

### **Article 9 Symposium**

In 2008 Professor Stephen L. Sepinuck, a Fellow and a co-founder and director of the Gonzaga School of Law’s Commercial Law Center, proposed a Revised Article 9 symposium to be cosponsored by the College and the Commercial Law Center and published by the Gonzaga Law Review. (Professor Neil Cohen had suggested having a symposium on Article 9 or other commercial law issues several years earlier.)

As Sepinuck explains, he and Professor Linda J. Rusch (President 2009-10), co-founder with Sepinuck of Gonzaga School of Law’s Commercial Law Center, had been “involved fairly heavily” in the Article 9 revisions. “It occurred to us that it would be useful to have a ten-year retrospective on Revised Article 9. [The Commercial Law] Center had done a symposium issue three or four years ago on intellectual property and bankruptcy, so we decided we should do another symposium. As soon as we thought about doing one on Revised Article 9, we immediately thought maybe the College would like to join us.”

“The College is looking for activities to get into that would be useful to the practitioner and to the academic,” Sepinuck said in proposing the symposium as a way “to bridge the gap.” “The Regents thought it was a great idea,” Sepinuck says, “so we did it.”

In 2008, the College agreed to sponsor and provide financial support for the symposium, and named Professor Steven Harris as Sepinuck’s co-editor. The symposium project would commemorate the 10<sup>th</sup> anniversary of the adoption of Revised Article 9 of the UCC and would be published in the Gonzaga Law Review. As Sepinuck explains, he and Harris “actually didn’t do much editing. We mostly did soliciting in terms of contacting people and asking that they write for the symposium.” The project proceeded smoothly. “We did everything together. . . . A

lot of people responded, and we ended up with 11 articles” that were published as “*Symposium on Revised Article 9*” in the Spring 2011 Gonzaga Law Review.<sup>15</sup>

According to Maury Poscover, College Fellows that are academics are often examples of law professors who “are teaching their courses with some additional level of putting them in context. There are seminars now on commercial lending. There are adjuncts who teach, and sometimes team-teach with full-time faculty, how to do a deal.”

Leonard Gilbert is also thankful for the opportunities the College has afforded for academics to get together with practitioners: “[H]aving the contact with those who are teachers of commercial law, who make great contribution in that area, [has] been beneficial to all of us. We heard from them the latest work ... at each of our sessions. Those who teach have been generous with their time in sharing what’s going on, what we should be aware of, and that’s been extremely helpful.”

### **Website**

The College website began as a communication tool and replaced the “hard copy” directory that had been distributed to Fellows for many years. During his 2008-9 presidency, Greene said “the key accomplishments were enhanced communications with the College’s members.” Over time the function of the website expanded, and materials on commercial law topics authored by Fellows and materials from the College briefing calls for Fellows are now posted and publicly available. In 2015, Steven N. Leitess (President 2015-2016) led an initiative, that included Peter H. Carson (President 2016-17), R. Marshall Grodner, Patrick (Buzz) A. Guida, and Pamela Martinson, to redesign and significantly update and upgrade the College website, an effort that culminated in the changeover to an appealing and highly functional new website in the Spring of 2016.

### **Representatives, Observers and Briefing Calls**

To further involvement of the College in law reform, as well as provide information for Fellows about developments in commercial finance law and practice, the College has appointed Fellows to participate as official College representatives or observers to projects sponsored by the Uniform Law Commission (ULC), the ABA BLS and other organizations. The representatives and observers have attended meetings and participated on conference calls conducted by those organizations and , beginning in 2014, have provided materials and briefing calls for Fellows that summarize developments and seek input from Fellows for the drafting process.<sup>16</sup> In addition to the College’s appointed representatives and observers, many other Fellows have been involved in the drafting process, including as drafting committee chairs or

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<sup>15</sup> A list of the symposium articles is attached as **Appendix 5**.

<sup>16</sup> Materials related to the project and discussed during the briefing calls are posted to the College website <https://amccfl.memberclicks.net/briefing-calls-for-fellows>

members, drafting committee reporters, ABA Advisors and members of the ULC or ABA BLS committees, and participated in presenting briefing calls.

- Sylvia Fung Chin was appointed by the College to take part in the Legal Opinion Risk Seminars, a joint project of the ABA, the TriBar Legal Opinion Committee, and other state bar committees and law firms, to provide a national forum for the discussion of important issues relating to closing opinions. This project is currently called the Working Group on Legal Opinions (**WGLO**). The College is a member of WGLO's Association Advisory Board, and Chin is currently the College's observer to WGLO.<sup>17</sup>
- Kenny Greene served as the College's observer to the BLS Taskforce on Model Deposit Account Control Agreement (**DACA**).<sup>18</sup>
- Professor Linda Rusch served as the College's observer to the drafting of the 2010 amendments to Uniform Commercial Code Article 9<sup>19</sup>
- Professor Steven Harris served as the College's observer to the ULC project to amend the Uniform Fraudulent Conveyance Act (which was retitled the Uniform Voidable Transactions Act (**UVTA**) as part of the amendment process).<sup>20</sup>
- Professor Stephen Sepinuck served as the College's observer on the drafting of the ULC's Commercial Real Estate Receivership Act.<sup>21</sup>
- Professor Amelia Boss served as the College's observer to the Committee on the Electronic Registry for Residential Notes.<sup>22</sup>

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<sup>17</sup> Information about WGLO can be found at <https://www.wglo.net/>.

<sup>18</sup> Information about the Model DACA can be found at <http://apps.americanbar.org/dch/committee.cfm?com=CL710060>.

<sup>19</sup> Information about the 2010 amendments to Article 9 can be found at <http://www.uniformlaws.org/Act.aspx?title=UCC%20Article%209%20Amendments%20%282010%29>.

<sup>20</sup> Information about the 2014 amendments to the UVTA can be found on the ULC website at <http://www.uniformlaws.org/Act.aspx?title=Voidable%20Transactions%20Act%20Amendments%20%282014%29%20-%20Formerly%20Fraudulent%20Transfer%20Act>.

<sup>21</sup> Information about the Commercial Real Estate Receivership Act can be found on the ULC website at <http://www.uniformlaws.org/Act.aspx?title=Commercial%20Real%20Estate%20Receivership%20Act>.

<sup>22</sup> Information about the Committee on the Electronic Registry for Residential Notes can be found on the ULC website at

- Howard Darmstadter is the College’s representative to the BLS Taskforce on Model IP Security Agreement (**MIPSA**).<sup>23</sup>
- Carolan Berkley is the College’s observer to the ULC’s drafting committee on Series of Unincorporated Business Entities Act.<sup>24</sup>
- Pamela Martinson is the College’s observer to the ULC’s drafting committee on Regulation of Virtual Currencies.<sup>25</sup>
- Paul Hodnefield and Darrell Pierce are the College observers to the BLS Filing Office Operations and Search Logic Taskforce (**FOOSL**)<sup>26</sup> and at meetings of the International Association of Corporate Administrators (**IACA**), which covers matters relating to UCC filings (including model UCC forms) and searching.<sup>27</sup>
- Larry Safran is the College’s observer to the BLS Taskforce on Security Interests in LLC and Other Unincorporated Entity Interests.<sup>28</sup>
- Steve Weise and Neil Cohen serve as the College’s observers to the revision of the UNCITRAL Model Law on Secured Transactions.
- Christine Swanick serves as the College’s observer to the Uniform Law Commission’s drafting committee on the Model Tribal Secured Transactions Act.
- Steven Fleissig is the College’s representative to the Synergy Group, a group of approximately 20 attorneys from various disciplines, principally in the real estate

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<http://www.uniformlaws.org/Committee.aspx?title=Electronic%20Registry%20for%20Residential%20Mortgage%20Notes>.

<sup>23</sup> Information about MIPSAs can be found at

<http://apps.americanbar.org/dch/committee.cfm?com=CL190051>.

<sup>24</sup> Information about the Series of Unincorporated Business Entities Act can be found on the ULC website at

<http://www.uniformlaws.org/Committee.aspx?title=Limited%20Liability%20Company%20Protected%20Series%20Act>.

<sup>25</sup> Information about the Regulation of Virtual Currencies project can be found on the ULC website at

<http://www.uniformlaws.org/Committee.aspx?title=Regulation%20of%20Virtual%20Currency%20Businesses%20Act>.

<sup>26</sup> Information about FOOSL can be found at

<http://apps.americanbar.org/dch/committee.cfm?com=CL710051>.

<sup>27</sup> Information about IACA’s Secured Transactions Section can be found at

<https://www.iaca.org/secured-transactions/>.

<sup>28</sup> Information about the Taskforce can be found at

<http://apps.americanbar.org/dch/committee.cfm?com=CL590044>.

and lending arenas, brought together through the efforts of the American Bar Association. Synergy Group members include the ABA, ACREL (real estate lawyers), ACMA (mortgage attorneys), ICSC (shopping centers), and ICREW (real estate women).

Prior to instituting its formal observer program the College was represented by Fellows at other projects, including the ULC's Uniform Assignment of Rents Act, the Joint Committee of the American Law Institute and the ULC on Article 9/UN Convention on Accounts and the ULC's Model Tribal Secured Transactions Act.

### **Endorsements of Guidance Applicable to Commercial Finance Practice**

In 2008 the College joined a number of other organizations in approving the Statement on the Role of Customary Practice in the Preparation and Understanding of Third-Party Legal Opinions.<sup>29</sup>

In 2009, the College was invited by the ABA's Task Force on Gatekeeper Regulation and the Profession to endorse its Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing. Then-President Linda Rusch appointed a study committee to provide a recommendation, and in 2010 the College joined a number of other organizations in endorsing the Guidelines.

### **PEB Comment Letter**

In 2011, the College submitted a comment letter on the March 2011 Draft Report of the Permanent Editorial Board for the Uniform Commercial Code (**PEB**) – UCC Rules Applicable to the Assignment of Mortgage Notes and to the Ownership and Enforcement of those Notes and the Mortgages Securing Them.<sup>30</sup> Fellows Professor Stephen L. Sepinuck, R. Marshall Grodner, and Teresa Wilton Harmon led the effort for the College. The PEB published its report, "Application of the UCC to Selected Issues Relating to Mortgage Notes," in November 2011; the Report addresses the application of the rules in UCC Articles 3 and 9 to issues such as who may enforce a mortgage note, what steps must be taken to transfer ownership of a mortgage note or use the note as collateral for an obligation, the effect of a transfer of a mortgage note on the related mortgage, and what steps a person to whom a mortgage note has been transferred may take in order to become an assignee of record of the mortgage note if that step is necessary for non-judicial foreclosure.

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<sup>29</sup> The Statement was published as 63 *The Business Lawyer* 1277 (2008) and can be found at <http://apps.americanbar.org/buslaw/tribar/>.

<sup>30</sup> A copy of the comment letter can be downloaded from the College website at [https://amccfl.memberclicks.net/index.php?option=com\\_content&view=article&id=52:peb-comment-letter&catid=20:site-content](https://amccfl.memberclicks.net/index.php?option=com_content&view=article&id=52:peb-comment-letter&catid=20:site-content)

## Looking at History and Planning for the Future

As the College completed its first 20 years, the College's officers gave thought, as Christopher J. Rockers (President 2012-13) puts it, to "reflecting [on] where we came from – and remembering the commercial finance lawyers who, 20 years ago, made the effort to establish the College."

Attention focused on two areas. Linda Sartin (President 2011-12) commissioned writing a College history, which Rockers said "was, above all, an attempt to preserve what might otherwise become lost." To that end, Lynn Soukup led an effort to collect and organize records "that had previously been scattered among officers back to the beginning."

The second area of focus involved establishing in 2013 a Strategic Planning Working Group. Its charge would be, in Rockers's words, "to analyze what we do and what the Fellows want to make it better. ... To decide what we *really* want to be when we grow up."

Though the Strategic Planning Working Group (made up of then-incoming President Lianne Crittenden as Chair, Sylvia Chin, Chris Rockers, Steve Sepinuck, Ed Smith (who had served on the 1997 "Blue Sky" Committee), and Lynn Soukup, as well as Pete Carson, Steve Leitess, Norman M. Powell, and Scott A. Lessne) didn't meet formally until the day after Rockers left office as College president, some specific changes were already under discussion, including additional offerings of substantive programs and periodic reports on projects by the observers appointed by the College.

After polling the Fellows (through a survey created by Carson), the College decided to add a second annual event for the College Fellows to be held in connection with the BLS annual meeting beginning in September 2014. While the College's annual spring meeting would continue to be largely social, including the induction of new Fellows, presentation of awards and the election of new officers and Regents of the College, the new fall event would include both a social component and a substantive program for Fellows and invited guests on a commercial finance topic.

Professor Stephen Sepinuck volunteered to organize and lead the inaugural program, an "Advanced Seminar on Intellectual Property Traps in Secured Financing" designed for the Fellows of the College by Sepinuck and held in September 2014. After a brief review of the perfection and priority rules applicable to security interests in patents, trademarks, and copyrights, participants discussed problems designed to reveal some of the IP traps for secured lenders. The problems covered issues that can arise when the debtor is an owner, licensor, or licensee of IP.<sup>31</sup>

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<sup>31</sup> The 2014 seminar materials are available on the College website at [https://amccfl.memberclicks.net/index.php?option=com\\_content&view=article&id=43:uniform-commercial-code&catid=20:site-content&Itemid=130](https://amccfl.memberclicks.net/index.php?option=com_content&view=article&id=43:uniform-commercial-code&catid=20:site-content&Itemid=130)



In September 2015, the College held its second program for Fellows. The “Advanced Seminar on Payment Rights as Article 9 Collateral” was designed for the Fellows of the College by Professor Neil Cohen. The seminar addressed various types of payment rights that are covered in one way or another by Article 9. Issues moved from the familiar (*e.g.* the enforcement of the payment rights by a secured party) to special contexts and areas of controversy (including issues currently being considered by the Permanent Editorial Board of the UCC for commentary). With more than 30 Fellows in attendance, including significant representation of the Revised Article 9 and 2010 Amendments Drafting Committees as well as the Permanent Editorial Board, the lively discussions probed the nuances and uncertainties of the UCC and current law. So engaged were the attendees and so in depth the discussion that Cohen has agreed to lead a continuation of the seminar (along with separate component on choice of law rules in cross-border secured transactions) in the fall of 2017.<sup>32</sup> Professor Dan Kleinberger, Reporter for the ongoing Uniform Law Commission drafting project on Series of Unincorporated Business Entities, has graciously agreed to organize and lead the 2016 fall advanced seminar around the topic of interests, including security interests, in equity interests, including those of non-corporate entities.

### ***Looking Ahead***

*“I would hope that people are still willing to contribute time to doing projects that are for the general good . . . and I think the College is one way people have made those contributions. And you hope people will continue to do that.”*

Since the College’s formation in 1990, being a Fellow has offered a number of personal and professional benefits.

Maury Poscover has enjoyed “a thriving career.” And, he adds, “A lot of it is attributable to my relationship with people that I’ve met either through my ABA activities or the College. . . . I don’t think anyone picks up a book and [says], ‘Oh, he’s in the College. I’ll use him,’ ” Poscover said. “But on the other hand, when they are looking at several people, it is a confirmation.”

Kenny Greene sees College membership as a sign of affirmation. “To be an accomplished professional – no matter your specific area of expertise,” he says – “you must have the respect of your peers. Membership in the College validates that respect.”

Steve Weise sees membership in the College as a kind of “Good Housekeeping seal of approval.” And Weise is only half joking when he notes that certain Fellows act as a kind of

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<sup>32</sup> The 2015 seminar materials are available on the College website at [https://amccfl.memberclicks.net/index.php?option=com\\_content&view=article&id=37:college-activities&catid=20:site-content&Itemid=137](https://amccfl.memberclicks.net/index.php?option=com_content&view=article&id=37:college-activities&catid=20:site-content&Itemid=137)

“supreme council of the Jedi Knights” in defending Article 9. “I know, personally, I think of Article 9, or the UCC more generally, as like one of my kids that you’ve got to protect while they are little. ... Except the UCC, Article 9, never quite grows up. If people want to mess around with it, [we] try to make sure there’s a really good reason and protect it. ... It’s a good statute, and [it’s] done its job, and there’s a lot of benefits in uniformity. You sort of watch over it – keep an eye out late at night.”

David Willenzik points to the ABA and its various committees as engaged in substantive projects in which College Fellows are active participants. “The College is an honorary society,” he says. “[T]he College is not the driver. The members of the College are drivers. But they are not drivers for the College. They are drivers for themselves and their law firms and their law schools, and a lot of it is borne through the ABA.”

Poscover still recalls the pre-Internet days when commercial finance lawyers were looking for a gathering place to share ideas and make other kinds of contact. For him, the social function of the College has always remained profound. “I think,” he says, “it’s provided a place for those, many of whom don’t know each other, to periodically gather and socialize ... with people from parts of the country whom they’ve never met or with whom they’ve interacted.” Poscover says that kind of interaction can also naturally lead to a sense of professional obligation. “You look around and see you’ve been selected to a group of those whom you consider ‘icons,’ ” he said, “and then I think it provides a role model for you to feel like you have to do something to be an icon.”

Weise also points to the College as encouraging contributions to the profession. “I would hope that people are still willing to contribute time to doing projects that are for the general good, as opposed to doing billable hours for their clients,” Weise says, “and I think the College is one way people have made those contributions. And you hope people will continue to do that.”

Steve Sepinuck credits the College with “build[ing] bridges between people who deal in this area of the law” by providing for “interface, communication, collegiality [between] academics” and “people who have practiced commercial finance law their whole career.” “The College and the ABA kind of work in tandem in this respect,” Sepinuck says. “When I have an Article 9 question, there are 20-30 people I can e-mail the questions to, and it’s roughly 50-50 practitioners and teachers. ... And I don’t think we distinguish among ourselves who’s an academic and who’s a practitioner because I think there’s no real divide in this area of the law.”

As far as a future role for the College, Sepinuck would like to see the organization assume a role in helping draw students to the study and, ultimately, practice of commercial finance law—perhaps, he says, by sponsoring “webinars on aspects of commercial finance that it could post on its website for free.” Exposing students to the field is key because “you don’t get a large cache of students who know at the outset that they want to practice commercial law. Most of them, like me, end up being drawn to it only after [being] exposed.” Sepinuck, together with Fellow John Francis Hilson, recently published a book, *Transactional Skills: How to Structure*

*and Document a Deal*, a collaboration and joint publication of West Academic, BLS and the College. Sepinuck says the book “will be used to teach transactional skills and . . . [is] designed for use [both] in law schools and law firms.”<sup>33</sup> The idea for the book followed from discussions that Sepinuck had with other Fellows, including David Willenzik, about including transactional skills and practice in teaching materials on commercial practice.

When it comes to an enduring quality of the College, Earl Leites offers a straightforward answer: “the concept of professionalism.” Or, as he elaborates, “The College served as a great method for the improvement and encouragement of professionalism among lawyers” who were involved in commercial finance. Along with everything else, Leites says, formation of the College “fulfilled the desire that Ernie Williams and David [Willenzik] and Maury Poscover and I had of providing a place where the field of the law in which we ‘lived,’ if you will, could be improved – where quality could be increased. And I loved seeing that.”

“We’ve got a lot of great young lawyers now who are members of the College and who are in the leadership,” Willenzik says. “They are doing a great job. Us old fogies get to think about things and be involved a little bit, but I think things are in great hands today.”

This history of the College is being published in the Spring of 2016, following the expansion of the College’s appointment of representatives and observers to commercial law drafting projects and related briefings for Fellows, the successful implementation of the advanced seminar for Fellows, the changeover to a re-designed and updated College website and the College’s first meeting outside the United States, in Montreal, Canada. The College has over its history developed as what its founders hoped to see – the gathering of experts in the field of commercial finance law that strengthens and extends its associative benefits for its Fellows while striving to improve the practice of commercial finance law for all. The College is grateful to the many Fellows who have contributed to the activities of the College and its success in fulfilling its mission.

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<sup>33</sup> Additional information about the book is available at <http://www.transactionalskills.com> and <http://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=186143867&term=transactional%20skills>.

*ACCFL Founding Three*

**Maury B. Poscover** graduated from Lehigh University and earned his juris doctor degree from Washington University School of Law, where he was Note Editor and Business Manager of the Washington University Law Quarterly. Poscover has held a number of positions with the ABA, including Chair of the Business Law Section and member of the ABA Board of Governors. He is currently a senior counsel at Husch Blackwell LLP and was formerly the chair of the firm. Poscover is a recipient of the College's Homer Kripke Lifetime Achievement Award

**David S. Willenzik** graduated from the College of Business at the University of Illinois and received his juris doctor degree from the Paul M. Hebert Law Center at Louisiana State University, where he was a member of the LSU Law Review and served on the Moot Court Board. Willenzik retired in 2016 from the private practice of law where he had been a long-time partner of McGlinchey Stafford PLLC and, after that, a special counsel with Jones Walker LLP, although he continues to teach law courses at both LSU Law Center and Tulane University School of Law. Willenzik is a recipient of the College's Homer Kripke Lifetime Achievement Award.

**Ernest Bland Williams III**, known to his friends as E III, graduated from Vanderbilt University and received his law degree from Vanderbilt School of Law. He began his law career in Memphis, Tennessee, at Chandler, Sheperd, Heiskell & Williams, a firm started by his father. Williams chaired the Interest and Usury Subcommittee of the Commercial Finance Committee (then known as the Commercial Financial Services Committee) of the ABA Business Law Section. He was one of the original instructors at the University of Memphis School of Law, where he taught courses in commercial law. Williams died in 2008. Williams is a recipient of the College's Special Service Award.

## THE SECTION IN ACTION

### Doing our spring thing

More than 20 CLE programs, a speech by a former chair of the Section of Business Law, and exciting social events are among the highlights of the Section's 17th annual Spring Meeting April 9-12 in Orlando, Fla.

Here's just a sampling of the CLE programs: "Silverado at Rest — The Third Party Legal Opinion Report;" "Commercial Law Developments — 1991;" and "Limited Liability Companies — An Introduction and Status Report." More than 175 committee and subcommittee meetings are covering the latest hot topics.

John J. Creedon, former chair of the Section and retired CEO of the Metropolitan Life Insurance Co., is addressing Section members at the luncheon on Friday, April 10. His talk includes insights on current business and corporate governance issues.

The meeting is headquartered at the Walt Disney World Dolphin Hotel.

### Put yourself between covers

Do you desire to be between covers? Of the book variety, we mean.

The Section is seeking authors for its book-publishing program. We're looking to publish books and mono-

graphs by business lawyers on subjects with nationwide appeal to their colleagues. It also helps if a subject is either timely, meaning it has not already been covered elsewhere extensively, or timeless, meaning it concerns principles or techniques that won't soon be outdated.

If you're interested, you may call Myrl Scott, chair of the Section's Monographs and Books Committee, at 213/620-1780; or Susan Yessne, manager of new book development at the ABA Press, at 312/988-6092.

### College tips hat to the best

Recognizing the best.

That's the goal of the American College of Commercial Finance Lawyers. The college, an outgrowth of the Section's Commercial Financial Services Committee, recognizes preeminent commercial finance lawyers who have helped others in the field by sharing knowledge, writing or putting together outstanding programs. Membership is limited to those lawyers whom their peers consider the very best in each state.

To be considered for fellowship, a lawyer must have practiced at least 15 years. ABA membership is not required. The president of the college, which was incorporated on Dec. 13, 1990, is Memphis lawyer Ernest Williams III, and there are about 60 charter members.

Among other programs, the college is considering one to set procedures for alternative dispute resolution in complex matters involving commercial finance law, and another to award young lawyers who have presented outstanding programs or written outstanding articles.

### SECTION CALENDAR

April 9-12	<b>ANNUAL SPRING MEETING</b> Walt Disney World Dolphin Hotel Orlando
May 1	National Institute: <b>ERISA BASICS: A PRIMER ON ERISA ISSUES</b> New York Hilton, New York
May 8-9	National Institute: <b>FIFTH ANNUAL SYMPOSIUM ON AGRICULTURE AND AGRIBUSINESS CREDIT</b> Monteleone Hotel, New Orleans
May 28-29	National Institute: <b>EMPLOYEE BENEFITS IN CORPORATE TRANSACTIONS</b> New York
June 3-5	National Institute: <b>ERISA BASICS: A PRIMER ON ERISA ISSUES</b> Mark Hopkins, San Francisco
Aug. 8-12	<b>ABA ANNUAL MEETING</b> Hyatt Regency and Park Hyatt San Francisco

*ACCFL Presidents*

Ernest B. Williams III (1991-1993)

David S. Willenzik (1993-1994)

A. Bruce Schimberg (1994-1995)

Maury B. Poscover (1995-1996)

C. Edward Dobbs (1996-1998)

Robert C. Colton (1998-1999)

Leonard H. Gilbert (1999-2000)

E. Carolan Berkley (2000-2001)

Earl F. Leitess (2001-2002)

Edwin E. Smith (2002-2003)

John D. Berchild (2003-2004)

Steven O. Weise (2004-2005)

Lee D. Powar (2005-2006)

Marsha E. Simms (2006-2007)

Thomas A. Snow (2007-2008)

Kenneth M. Greene (2008-2009)

Linda J. Rusch (2009-2010)

Martin Fingerhut (2010-2011)

Linda D. Sartin (2011-2012)

Christopher J. Rockers (2012-2013)

Leianne S. Crittenden (2013-2014)

Lynn A. Soukup (2014-2015)

Steven N. Leitess (2015-2016)

Peter H. Carson (2016-2017)

## *ACCFL Awards*

### **Homer Kripke Lifetime Achievement Award**

Prior to becoming the Chester Rohrlach Professor of Corporate Law, Finance and Taxation at New York University School of Law, Homer Kripke served as Assistant General Counsel at The CIT Group, Inc. for 17 years. An expert in secured transactions, Professor Kripke also mastered securities law and accounting, in addition to being President of the Association of Commercial Finance Attorneys, Inc. from 1963 to 1965. Having contributed to the development of American commercial jurisprudence throughout his entire adult life, the College has deemed it particularly fitting that our lifetime achievement award be named in Professor Kripke's honor.

The Homer Kripke Lifetime Achievement Award recognizes a career of noteworthy leadership and a history of exceptional dedication to the improvement of commercial finance law and practice. Award recipients have contributed to, and often changed the course of, commercial finance law and practice through activities that have had a lasting and significant impact.

### *Recipients*

- 1992: Professor Homer Kripke
- 1993: William B. Davenport
- 1996: Howard Ruda
- 1997: Professor William D. Hawkland
- 1998: A. Bruce Schimberg
- 1999: Donald J. Rapson
- 2001: Donald Lee Rome
- 2002: Professor James J. White
- 2005: Harry C. Sigman
- 2009: William M. Burke
- 2011: George A. Hisert  
David S. Willenzik
- 2012: Edwin E. Smith  
Steven O. Weise

2013: John B. Power  
2014: Professor Neil B. Cohen  
2015: Maury B. Poscover  
2016: Professor Amelia H. Boss

### **Grant Gilmore Award**

Grant Gilmore was a co-Reporter for the original Article 9 of the Uniform Commercial Code. He authored the classic treatise on secured transactions, and taught at several schools including Yale Law School and Columbia Law School. Professor Gilmore authored a number of books on commercial law, including secured transactions, admiralty law, and contract law, including his survey and criticism of contract law, *The Death of Contract*.

This award, named in Professor Gilmore's honor, is given when the College identifies superior writing in the field of commercial finance.

### ***Recipients***<sup>34</sup>

1992 **Kerry Lynn McIntosh**, Professor, Santa Clara University School of Law, for "Letters of Credit: Curbing Bad-Faith Dishonor," "We Have Met the Enemy and He is Us," and "Gilmore Spoke Too Soon: Contract Rises from the Ashes of the Bad Faith Tort"

1993 **R. Wilson Freyermuth**, Associate Professor, University of Missouri-Columbia, for "Of Hotel Revenues, Rents, and Formalities in the Bankruptcy Courts: Implications for Reforming Commercial Real Estate Finance"

1996 **Stephen L. Sepinuck**, Associate Professor, Gonzaga University School of Law for "A Defense of Extending Article 9 to Cover Security Interests in Deposit Accounts as Original Collateral"

1998 **Ronald J. Mann**, Professor of Law, University of Michigan Law School, for "Explaining the Pattern of Secured Credit," and **Marshall E. Tracht**, Associate Professor, Hofstra University School of Law, for "Contractual Bankruptcy Waivers: Reconciling Theory, Practice, and Law"

2000 **Lisa E. Bernstein**, Professor, University of Chicago Law School, for "Merchant Law in a Merchant Court: Rethinking the Code's Search for Immanent Business Norms"

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<sup>34</sup> Affiliation and title listed is as of time of the award.



2002 **Thomas E. Plank**, Professor, University of Tennessee College of Law, for “The Creditor in Possession Under the Bankruptcy Code: History, Text and Policy”

2008 **Kenneth C. Kettering**, Professor, New York Law School, for “Securitization and Its Discontents: The Dynamics of Financial Product Development”

2015 **Melissa B. Jacoby**, Professor, University of North Carolina at Chapel Hill, and **Edward J. Janger**, Professor, Brooklyn Law School, for “Ice Cube Bonds: Allocating the Price of Process in Chapter 11 Bankruptcy”

2016 **Xuan-Thao Nguyen**, Professor, Indiana University Robert H. McKinney School of Law, for “Financing Innovation: Legal Development of Intellectual Property as Security in Financing, 1845-2014” and “In the Name of Patent Stewardship: The Federal Circuit’s Overreach into Commercial Law”

### **Special Service Award**

The Special Service Award is presented to Fellows of the College who have made significant contributions to the College’s goals by sharing their knowledge and promoting the development and improvement of the practice of commercial finance law. These contributions include developing and promoting the enactment of model laws, such as the Uniform Commercial Code, developing authoritative model agreements for use by practitioners, and significant efforts in the areas of continuing legal education.

#### ***2002 Award***

The Special Service Award was given in 2002 for Distinguished Service in the Development and Nationwide Enactment of Revised Article 9 of the Uniform Commercial Code to **William M. Burke, Professor Steven L. Harris, Professor Charles W. Mooney, Jr., and Steven O. Weise.**

The development and enactment of Revised Article 9 of the Uniform Commercial Code was a landmark achievement in commercial finance. Revised Article 9 became effective in almost all states on July 1, 2001, and is currently effective in all 50 states, the District of Columbia and the Virgin Islands and other jurisdictions. This major update to the most significant law ever to affect secured lending was drafted by a Committee chaired by William M. Burke. Co-Reporters Steven L. Harris and Charles W. Mooney, Jr. were aided by Steven O. Weise, the ABA advisor to the Committee. Following enactment, these lawyers continued their efforts toward the successful enactment of the law.

### ***2009 Award***

**Ernest Bland Williams III** (known as “E III”) and **Jeffrey S. Turner** were recognized for their many contributions to the College and continuing legal education in commercial finance law.<sup>35</sup>

E III was one of the founders of the College, and served as its first president from 1991 to 1993. Without his guidance and wisdom, the College would not be in existence today. E III also taught and wrote on commercial law topics. E III passed away in 2008.

Jeff Turner was a prolific writer and educator in the field of commercial finance. He served as Chair of the ABA Business Law Section Commercial Finance Committee (then known as the Commercial Financial Service Committee) and in many capacities in leadership of the LA County Bar Association and the State Bar of California. Jeff was co-author of a leading treatise on asset based lending as well as the author of numerous articles and a frequent CLE speaker. Jeff passed away in 2004.

### ***2011 Award***

Richard Brown and Gary D. Chamblee received the Special Service Award for their leadership in the development of the ABA BLS Model Intercreditor Agreement. Gary passed away in 2011.<sup>36</sup>

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<sup>35</sup> Additional information about E III’s and Jeff Turner’s many contributions and achievements can be found on the College website: <https://amccfl.memberclicks.net/awards>

<sup>36</sup> Additional information about Richard Brown’s and Gary Chamblee’s award can be found on the College website: <https://amccfl.memberclicks.net/awards>

*Symposium on Revised Article 9*

*The Gonzaga Law Review*

*Spring 2011*

“The Language of Revised Article 9” by Scott J. Burnham

“Harmonizing Choice of Law in Article 9 With Emerging International Norms” by Kenneth C. Kettering (*College Fellow*)

“Using First Principles of UCC Article 9 to Solve Statutory Puzzles in Receivables Financing” by Steven L. Harris and Charles W. Mooney Jr. (*College Fellows*)

“Freedom of Contracts vs. Free Alienability: An Old Struggle Emerges in a New Context” by Neil B. Cohen (*College Fellow*) and William H. Henning

“Electronic Chattel Paper: Invitation Accepted” by Jane K. Winn

“Supergeneric Collateral Descriptions in Financing Statements and Notice Filing” by Lissa Lamkin Broome (*College Fellow*)

“Improvements(?) to the UCC Article 9 Filing System” by Harry C. Sigman (*College Fellow*)

“Helping Microfinance Become Commercially Sustainable” by Steven L. Schwarcz (*College Fellow*)

“The Assignee of an Article 9 Security Interest: Two Sets of Drafting Errors and How to Live With Them” by Paul M. Shupack (*College Fellow*)

“Article 9’s Bankrupt Proceeds Rule: Amending Bankruptcy Code Section 552 Through the UCC ‘Proceeds’ Definition” by G. Ray Warner

“Perfecting Article 9: A Partial Prescription for the Next Revision” by Stephen L. Sepinuck (*College Fellow*)

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