

4-1-2017

Tribute to Professor Margaret Howard

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Recommended Citation

Neil P. Olack, Geoffrey L. Berman, Eric D. Chapman, Shane Vandenberg, Joshua A.T. Fairfield, Lois R. Lupica, Ann MacLean Massie, Denise Neary, Nancy B. Rapoport, Charles J. Tabb, Eugene R. Wedoff, and Robin Fretwell Wilson, *Tribute to Professor Margaret Howard*, 74 Wash. & Lee L. Rev. 625 (2017), <http://scholarlycommons.law.wlu.edu/wlulr/vol74/iss2/3>

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Tribute to Professor Margaret Howard

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Tribute to Professor Margaret Howard



Photo taken by Patrick Hinely, Washington and Lee University Photographer

From the Classroom to the Garden

The Honorable Neil P. Olack*

When the Editor in Chief of the *Washington and Lee Law Review* invited me to submit a tribute to Professor Margaret Howard, I eagerly accepted the invitation. I knew Margaret was retiring at the end of 2016, so it came as no surprise that friends and colleagues were organizing ways to recognize her many achievements. For me, the decision to participate was very easy—she has been a friend for decades. I responded with enthusiasm and calendared the date. Then it hit me—what exactly is a tribute?

As someone who has been involved in interpreting a code for over thirty-five years, I first considered whether there is a suitable definition of “tribute.” Should I follow the plain meaning of the word? A definition from a reputable source seemed fitting. One definition from *Merriam-Webster’s* dictionary made me uncomfortable: “money or goods that a ruler or country gives to another ruler or country especially for protection.”¹ Was Washington and Lee University School of Law somehow expecting that I send it a check? I sure hope not. Another definition seemed right on point: “something that you say, give, or do to show respect or affection for someone.”² I have my mission clearly defined.

Margaret and I have devoted most of our professional careers to bankruptcy law. For those of you who do not know many bankruptcy professionals, we are an odd lot. We devote our careers to studying insolvency laws, primarily Title 11 of the U.S. Code. It matters not whether the case is consumer or business, domestic or foreign, small or “mega.” It matters how society resolves all of the competing interests in the world of debtor/creditor relations.

* Judge Olack serves as a bankruptcy judge for the United States Bankruptcy Court for the Northern and Southern Districts of Mississippi.

1. *Tribute*, MERRIAM-WEBSTER DICTIONARY (11th ed. 2003).

2. *Id.*

Bankruptcy has two primary objectives. First, the Supreme Court has opined that bankruptcy “gives to the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.”³ This objective is often referred to as the “fresh start.”⁴ Second, bankruptcy emphasizes equality of distribution among similarly situated creditors. Achieving these two objectives is the challenge of every bankruptcy professional. The founders of this country thought bankruptcy was so important that they included it in Article I, Section 8 of the U.S. Constitution: “Congress shall have Power . . . [t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.”⁵

How we best achieve the objectives of bankruptcy has been a subject of debate from the very beginning of federal legislative history. Since the modern bankruptcy code was enacted in 1978, various groups have sought to amend the code for a myriad of reasons. The academic community has made enormous contributions to the debate through their scholarship and teaching. Margaret has been one of the academic leaders who has caused us all to pause and reflect about what we are all trying to achieve by having “uniform laws on the subject of bankruptcy.” She has provided deep insight through her research and developed compelling analysis in her presentations. This is what we have come to expect from her throughout her career.

It was always a pleasure when our paths crossed at seminars and conferences. I have used her bankruptcy law textbook as an adjunct faculty member of a local law school for a number of years. We have discussed the bankruptcy topic of the day in our telephone conversations. Certainly, the most memorable moment for me was when Margaret was inducted into the American College of Bankruptcy.⁶ The College is “an honorary public

3. *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934).

4. *United States v. Sec. Indus. Bank*, 459 U.S. 70, 72 n.1 (1982).

5. U.S. CONST. art. I, § 8.

6. American College of Bankruptcy, Am. C. of Bankr., <https://www.americancollegeofbankruptcy.com/> (last visited May 3, 2017) (on file with the Washington and Lee Law Review).

service association of bankruptcy and insolvency professionals” who are invited to join “based on a proven record of the highest standards of professionalism plus service to the profession and their communities.”⁷ I attended the induction of the XVI Class of Fellows of the College held at the United States Supreme Court. Margaret was part of this distinguished group. Would an automobile accident and a broken leg days before Margaret’s induction stop her from attending this well-deserved honor? The answer is—of course not. On crutches, she was recognized by her peers from the global insolvency community.

I cannot fail to recognize her achievements in the classroom. The students at Washington and Lee University School of Law have been most fortunate to have her as a professor. Each student completed her class with far more than a basic understanding of bankruptcy law. They grasped how bankruptcy law was an integral part of our legal system, appreciated the goals sought in a balanced system for adjudicating the rights of debtors and creditors, and recognized the consequences of legislation that alter this delicate balance.

This spring we will not find Margaret in the classroom. On any pretty day, I am quite certain that we will be able to find her working in the garden, another one of her passions. From the classroom to the garden is a fitting title to the next chapter in her life.



7. *Id.*

A Tribute to Professor Margaret Howard

Geoffrey L. Berman*

I guess in some ways I wasn't fortunate enough to have met and gotten to know Professor Howard earlier in hers and my professional career, and that is my loss. I was, however, fortunate to meet her through her involvement in the American Bankruptcy Institute (ABI), for which the ABI and I are so much better off. Margaret and I served on the ABI's Board of Directors and on its Executive Committee together and continued to work together when I became the ABI's President. She has always been a lady, and gracious with her time and knowledge—something that can't be said of everyone.

I have the utmost respect for Margaret and can speak to her caring, not only for the law or her students, but for her friends, which I consider myself lucky to be. When I was dealing with my own health issues a few years ago, she was one of our (my wife and my) friends. She shared her concerns for me, not just with me, but with our mutual friends in the academic side of insolvency law. We saw each other the first time after I was well enough to travel, and her caring was evident to everyone that saw us share a HUG.¹

But most of all, one only has to look to how her students feel about her to know how much she has touched the lives of others. I got the chance to sit in one of her classes and join a number of her students at a dinner she hosted at her home when I was visiting Washington & Lee. The joy of her students in being enriched in the learning atmosphere was pervasive through her home and classroom. I felt fortunate to share that evening and class time with her and her students. I know graduates from her classes now practicing bankruptcy law, and they too continue to

* Senior Managing Director, Development Specialists, Inc., Los Angeles, CA; Former President, American Bankruptcy Institute.

1. With all fairness to Professor Nancy Rapoport as to HUGS and Richard Carmody, whose firm Adams & Reese has a 501(c)(3) charity named HUGS, that stands for Hope, Understanding, Giving and Support.

smile when you talk about Margaret and her impact on their lives.

Washington & Lee will lose a tremendous ambassador to students—though I have no doubt she will find her way onto campus on a regular basis. I will continue to cherish my friendship with her, and I know that her “retirement” is in name only, as she will continue to grace and enrich the lives of those she touches.

May every day to come have the sun shining brightly upon her as she enjoys the next phase of her journey.

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Professor Margaret Howard Tribute

Mr. Eric D. Chapman*

Mr. Shane Vandenberg**

Professor Howard taught our introductory course in contract law. As part of this course, she also taught introductory legal writing, a course that required submitting a written memorandum for review. As any of her former students can confirm, Professor Howard expects her students to write well. Generally, this meant that every rule in *Strunk & White* was observed, any unnecessary words were excised, and proper word choice required careful deliberation.¹ As a result, drafting a

* Eric Chapman served as a Burks Scholar for Professor Howard’s legal research and legal writing course in 2012, graduated Washington & Lee University School of Law in 2013, and currently resides in Blacksburg, Virginia, where he provides outside general counsel services for companies in the areas of employment law and business litigation.

** Shane Vandenberg graduated from Washington & Lee University School of Law in 2013. While there, he was enrolled in every course Professor Howard taught. In 2014 he received his LL.M. in taxation from New York University School of Law. Currently, he is a Senior Associate in KPMG LLP’s Tax Controversy Services Practice and specializes in IRS procedural matters and income tax audit controversies.

1. For example, we should have deleted “any” and replaced “excised” in

memorandum that met Professor Howard's writing standards was, if not impossible, then extremely difficult. But as unreachable as we may have felt her expectations were, they were not nearly as high as the standards she imposed on herself when reviewing our memoranda. In fact, Professor Howard's process for reviewing our memoranda is an excellent example of her devotion to helping her students—whether helping them to improve their writing, their legal analysis, or their devotion to Duke basketball.²

Professor Howard's comments and revisions are, to borrow a description,³ a study in scarlet, threading through our memoranda and unravelling, isolating, and exposing every structural, grammatical, and analytical mistake. The focus and time required for her to not only evaluate each legal argument, but to also examine and comment upon the structure, word choice, and grammar of every sentence in a six-page memorandum is mind-boggling. But to apply that same time and attention to almost two dozen papers, twice a semester, requires something more than commitment: it requires devotion. These comments and revisions were not merely corrections—they were blueprints for improvement that included a systematic process for editing and revising our future work from macro to micro. Even if we didn't recognize it at the time, Professor Howard was providing us with the skills and tools necessary to continue improving long after our final exam in contracts.

We have spoken with enough of our fellow students to understand that our experiences in Professor Howard's classes were not unusual;⁴ unsurprisingly, neither are our feelings of gratitude to her unique. Accordingly, though this entire musing is an inadequate testament to Professor Howard's drafting lessons, we are honored to have been permitted to express our thanks to

the prior clause with "removed."

2. Although we admit that we still struggle with each of these, we have certainly made improvements in the areas of writing and legal analysis.

3. Our apologies to Sir Arthur Conan Doyle.

4. Most former students queried can vividly recall the first time they reviewed her comments and corrections on their memorandum and generally do not enjoy the walk down memory lane.

an exemplary mentor:

Professor Howard,

Thank you for your patience with us as we stumbled through legal landscapes you know so well. Thank you for your kindness and guidance when we came to you for both personal and professional advice. Thank you for never sparing the red ink so that we could recognize and learn from our mistakes. Thank you for teaching us that presence comes from composure. Most of all, thank you for seeing the potential in each of us and guiding us towards it (often before many of us knew where we were headed) and continuing to do so long after we have left the classroom.



Margaret Howard Tribute

Joshua A.T. Fairfield*

People bring Margaret Howard things. Her students bring her props, like a can of beer, or a roll of bathroom tissue, to back up her wonderful stories and metaphors from class. Her stories are so vivid and memorable that her students want to bring them to life, give them tangible form. Her colleagues and friends—like me—bring her our hardest questions about bankruptcy and commercial law and our personal dilemmas. They do this—we do this—because of Margaret’s unstinting warmth, unflinching honesty, poise, grace, wisdom, and integrity.

There are many friends one can count on for support. There are very few friends one can count on for wisdom. These are not the same, no matter how many times we say we want good advice. Margaret is revered by her students and sought out by her colleagues because she tells the truth in love. Her students trust her not just to tell them when they are right, but what they can do better. Her colleagues trust her to tell them when they have not just done well enough, but how they can get it right.

* Professor of Law, Washington and Lee University School of Law.

Although Margaret is strong, she is the first friend of the underdog. I have seen her respond to personal attacks with grace and poise, but when someone else is under assault, she jumps to their defense. She beards lions in their dens, and is willing to stand alone for what is right, even at significant personal cost. With her precision and strength, it is all the more wonderful that she is so open and gracious to those who disagree with her. I recall one story she told, in which she had strongly disagreed with a colleague in a faculty meeting. After the meeting ended, she and her colleague gave each other warm hugs, with tears in their eyes. Margaret shows us that disagreement need not lead to dislike, and that conflicting ideas need not lead to a clash of personalities.

She represents these qualities so well because she values them herself. In one of her favorite stories, she described an interaction between her and a former junior colleague. That colleague not only read and commented on Margaret's work, but then noted, in a somewhat risky move for a pre-tenure professor, that Margaret's article was "the best possible argument for the wrong position." Margaret not only appreciated the engagement and interaction, she treasured it, telling the story always with a sudden, brilliant smile at the punch line. She valued her colleague's guts and honesty, care and integrity.

Margaret has a lawyer's love for the intricacies of the law and an underlying thirst for justice. No one who has heard her speak about the injustices visited on the disadvantaged after the 2005 changes to the Bankruptcy Code could mistake her mastery of that law as anything less than a burning commitment to fix a deep wrong. Her careful eviscerations of that law have built important support and momentum, keeping the flaws of the Code in its interactions with the financially disadvantaged—those it was primarily meant to serve—in the forefront of the conversation.

Margaret's generosity with her intellectual gifts is matched only by her personal hospitality. Her home is a hub of activity, the axle on which a wheel of music, gardening, meals, and holiday events turns. She holds her gorgeous home, on which she has spent years of meticulous work, not as a museum piece to be admired from afar, but as a living mission to her neighbors, her

students, her colleagues, guests, and newcomers. Margaret extends this hospitality to her personal time as well. She makes time not only to interact professionally with her colleagues, to read drafts carefully, to provide insight and crucial commentary on their work, but spends time eating, conversing, walking, and traveling (both metaphorically and literally) alongside them.

I recall one instance in particular. Margaret was the chair of my tenure committee. The tenure process is harrowing for any young professor, even if one has every reason to hope for a good outcome. Margaret took my concerns in stride, looked at me calmly and kindly, and said: "Now is not the time to worry." That is vintage Margaret: she did not say there was no cause for worry, did not claim that there might not be a time to worry later, but merely that now was not the time. Each thing at the right time, each action for the right reason, each argument in the right place: that is the legacy of our colleague, mentor and friend.

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Tribute to Margaret Howard

Lois R. Lupica*

Margaret Howard is one of the rare academics who is as celebrated and respected by bankruptcy lawyers and judges as she is by fellow academics. Margaret's encyclopedic knowledge of bankruptcy law and her commitment to service have advanced and improved the bankruptcy system. Her integrity, generosity, and grace have left an indelible imprint on all those who have been fortunate enough to know her.

Margaret has been an active Fellow in the American College of Bankruptcy and a long-standing member of the American Bankruptcy Institute (ABI) Executive Committee. As Editor of the American College of Bankruptcy Circuit Review of Consumer Cases, Margaret persuaded dozens of lawyers, judges, and

* Maine Law Foundation Professor of Law, University of Maine School of Law.

academics to subject themselves to her sharp editorial pencil by writing case summaries for the book. Not surprisingly, the Circuit Review of Consumer Cases was completed on time and has become an invaluable resource for College fellows. Margaret also spent years as a responsible steward of ABI Endowment funds as Chair of the ABI Grants Committee. In that capacity, she skillfully and strategically identified areas of the bankruptcy system that needed study and encouraged scholars to propose targeted study proposals.

I am one such scholar who has Margaret to thank for her encouragement of an empirical study. In 2009, Margaret recognized that—particularly in light of the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act¹—a study of the consumer bankruptcy system was long overdue. After working tirelessly (and as always, diplomatically) to get approval for the study, she asked if I was interested in becoming principal investigator. At that point, I had never been Principal Investigator on a large empirical study, and although she had a lot more confidence in my ability than I did, I took on the project. Margaret was there as an advisor and advocate over the course of the three years of data gathering and analysis. She introduced me to the lawyers working in the trenches and skillfully navigated ABI politics on my behalf. The Study's final report was better for her counsel and contributions.

Margaret's own scholarship has long been known for analyzing and explaining, in critical detail, bankruptcy doctrine. Her most widely read article, *Dewsnapping the Bankruptcy Code*,² is a tour de force. Not content, however, to continue doing the kind of doctrinal work she was known for and good at, in 2013 Margaret agreed to be the Reporter for the National Study of Individual Chapter 11 Bankruptcies. She welcomed the challenge of thinking about the bankruptcy system in a new way, and she embraced the thought of working with luminary and experienced empiricist Professor Ted Eisenberg. When Ted unexpectedly passed away during the early days of the Study, Margaret, like

1. Pub. L. No. 109-8, 119 Stat. 23 (2005).

2. Margaret Howard, *Dewsnapping the Bankruptcy Code*, 1 J. BANKR. L. & PRAC. 513 (1992).

all of us, was devastated. She quickly rallied, however, found a worthy replacement, and executed a brilliant study.³ This study provided answers to the questions many of us have had about what type of individuals navigate the complexity of Chapter 11 and how they fare.

I was also fortunate to be asked to co-author the 6th Edition of *Bankruptcy, Cases and Materials*⁴ with Margaret, along with a companion book, *Developing Professional Skills*.⁵ Margaret is a workhorse, setting a standard for diligence and tenacity I could barely keep up with. She demonstrated a sharp and detailed mind, and I am honored to share authorship credit for these books with her.

Margaret is also a great public speaker. Always uber-prepared, she is funny, pointed, and insightful. I particularly appreciate her in the role of a moderator: organizing the scope and pace of each presentation, never letting the audience forget who is control of the program. You can see from her presentations (and the Casebook) that she is also a great teacher: methodical, organized, and always asking just the right questions. It is no wonder that she is revered by generations of students, many of whom I've met over the years as successful bankruptcy lawyers in their own right.

Good friends are few and far between, and I count Margaret as one of mine. Her impeccable manners, graceful countenance, and Southern charm exist alongside a great sense of adventure and a thirst for fun. Whether my plans involve spending time with Margaret at a spa weekend, or at a new museum in a conference city, I know I will be in the company of a warm, kind, funny, and generous soul.

I am not alone in having been on the receiving end of Margaret's generosity. Across the country there are many law students, lawyers, judges, and law professors who Margaret has mentored, befriended, and advised. I know that the bankruptcy community will miss her

3 See generally Richard M. Hynes, Anne Lawton & Margaret Howard, *National Study of Individual Chapter 11 Bankruptcies*, 25 AM. BANKR. INST. L. REV. 61 (2017).

4 MARGARET HOWARD & LOIS LUPICA, *BANKRUPTCY: CASES AND MATERIALS* (6th ed. 2015).

5 MARGARET HOWARD & LOIS LUPICA, *DEVELOPING PROFESSIONAL SKILLS: BANKRUPTCY* (2016).

professionally, but I am grateful that my friendship with Margaret Howard will endure for many years to come.

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Tribute: Professor Margaret Howard

Ann MacLean Massie*

Interior designer. Painter. Landscape designer. Master gardener. Gourmet chef. Organist (yes, she seriously considered pursuing that profession). Social worker. Teacher *extraordinaire*. Nationally regarded scholar. Margaret Howard would have to be the proverbial nine-lived cat to follow the numerous career paths opened to her by her abundant talents and interests. The world of legal academia is fortunate that she chose that path for investing her prodigious mind and extraordinary energies, and her hundreds of students are even luckier to have been the direct beneficiaries (but they are not the only ones).

Margaret's impressive credentials are well documented—her simultaneous Master's in Social Work and J.D. degrees; her meteoric rise to fame in the bankruptcy world with an article excoriating a Supreme Court bankruptcy opinion; her distinguished tenure at Vanderbilt; her prestigious visitorships to Emory, North Carolina, Duke, and Harvard; her position at W&L as the Law Alumni Association Professor of Law; her year as the American Bankruptcy Institute's Scholar in Residence in 2002; her leadership roles in the ABI; her prolific scholarship, including her bankruptcy casebook; and her selection by the ABI to head up its research project on the experiences of individuals who choose to file for bankruptcy under Chapter 11.

Whew! But that skeletal list of accomplishments only begins to convey the person, Margaret Howard. Her colleagues and friends know her to be a dynamo of energy who invests her full self in the task at hand. Whether she is planning a class, thinking through an article, working on her book in printer-ready format, planting her garden, or painting the walls in her beautifully renovated home—she designed every square inch—Margaret is never satisfied with less

* Professor of Law, Emerita, Washington and Lee University School of Law.

than her best, and her best is as close to perfection as it gets. She demands the same high standards of her students—a prospect that they see as daunting at the beginning of the semester, but that they come to appreciate as the most important attribute of their legal education. So long as a student is putting forth effort, Margaret will drop whatever else she is doing and work with the student who is struggling to understand complex material, or the one for whom writing does not come naturally. Our 1Ls learn legal writing at the hands of their professor in a substantive course, with a number of assignments and a great deal of feedback. Never one to refuse a difficult task, Margaret has taught a writing section of Contracts for years. At the beginning of this last semester of her teaching, I met one of her students in the hall who was expressing trepidation over the “dragon lady” that she understood her Contracts professor to be. Like all of Margaret’s other students, by the end of the semester, she wouldn’t have traded her experience for the world. Margaret Howard was their favorite. They showered her with gifts, and I understand there were a few tears.

We, Margaret’s colleagues at Washington and Lee, have also been showered with gifts—the gifts of a brilliant and talented colleague who has been ever ready to dive in and serve us as we needed. Whether on the Appointments Committee (among others) or as our representative to the Board of Trustees, Margaret has devoted herself in a thoughtful and gracious manner. She has been an encouraging mentor to junior colleagues and a ready source of careful critique to anyone seeking helpful comments prior to article submission.

Margaret leaves a gaping hole as she retires from the faculty—not just because no one else is prepared to teach bankruptcy, but also, and primarily, because with her multifaceted talents and indefatigable energy, she has given so much to the Law School. We will wave and wish her well as we drive by her burgeoning and lovely garden, where we expect to see those same talents and energies blossoming in new ways!



Margaret Howard

Denise Neary*

I can't see Margaret Howard and NOT think "steel magnolia."

She is such a perfect combination of genteel and formidable.

She caught my eye the first time I ever saw her—she was part of a National Conference of Bankruptcy Judges panel on consumer bankruptcy practices.

Someone on the panel was enthusiastically describing changing credit card policy standards and practices.

The crowd was giving the speaker a collective eye roll, yet listening attentively.

I noticed Margaret sit up just a little straighter (which is quite a feat when you possess perfect posture).

She let the speaker go on, describing and defending industry practices.

Then she trained her eyes at him and took him on.

She started quietly, and built dramatically.

The practices might be legal, but they were so . . . so . . . she appeared as if she were searching for just the right word.

The practices were so shameful.

(Never were the words scoundrel or cad actually used, but her delivery invoked those images.)

I remember thinking that day: whatever their circumstance, people are lucky to have an ally like Margaret Howard in their corner.

And I wanted to know more!

While I have been in so many rooms with her since then, that first impression holds true.

Margaret Howard is a woman of strong passion, with a stunning ability to champion causes that matter to her and to appeal to people's better nature.

I had the privilege of working with her on Federal Judicial Center (FJC) programs soon after that first encounter.

* Senior Judicial Education Attorney, The Federal Judicial Center.

And off and on, over the last twenty-five years, I have been up close and personal to the intriguing person who is Margaret Howard.

My first impression was Margaret Howard, compelling speaker.

My long-term impression is Margaret Howard, awesome teacher.

Sandwiched in between: it has been a joy getting to know this lovely woman, stunning cook (although I have yet to sample, her descriptions hint at perfection), who always arrives everywhere looking and sounding perfect.

My life would be simpler if I could resent such an accomplished, engaging, interesting person—but alas, it cannot be!

I find her delightful.

When she believes in something? Watch out! (And if someone tries to take her on, just make some popcorn and enjoy the show!)

When she doesn't think someone is being treated fairly, she stands up for them. I have heard her say, so many times, quietly—thoughtfully yet forcefully—"well, that's not right."

I am forever grateful that she has devoted so much of her big brain and her big heart to consumer bankruptcy matters.

She has inspired a legion of students (bankruptcy judges among them!) and has elevated the practice and the conversation around bankruptcy issues.

Her fervent fans include the bankruptcy judges who served on education programs with her. At FJC bankruptcy judge programs, she was often on panels with Judges Bill Brown and Gene Wedoff—if an observer happened upon them preparing, the observer would likely conclude that three great friends were just having fun catching up, not that three great minds were working hard to produce an extraordinary program (happily for all involved, either observation would have been accurate).

She makes those working with her want to be better teachers.

I am forever grateful that she devoted so much of her limited time to helping bankruptcy judges better understand consumer bankruptcy issues.

As she ventures forth into her newest adventures, she can look back knowing that she made a difference in the world she cares so much about. All of her students, me among them, are better for her efforts.

Happy retirement, Professor Howard!

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In Praise of Margaret Howard

Nancy B. Rapoport*

If it were possible to say “I’ve known Professor Howard a long time,” without implying that she and I are significantly older than we were when we first met, I’d do that. Having discovered that I get a lot less embarrassed by things as I get older, I’ll just say that I’m thankful for the many, many years that I’ve spent in Margaret Howard’s circle. She’s an absolute wonder.

There weren’t a lot of female bankruptcy professors when I entered academia, and Margaret was welcoming from the get-go. She has always been generous of spirit, and I’ve seen her reach out to newcomers to the field many times over.

What people might not know is how witty she is. (My guess is that her students feel her “I expect great things of you, and you are going to work hard” vibe, but that they don’t often get the pleasure of hearing her wry observations.) One of the best parts of any bankruptcy conference is sitting next to Margaret. Whenever I’m at a gathering of bankruptcy professionals, she’s one of the first people I seek out. She’s fun, and she’s smart as a whip.

She’s also meticulous. Her willingness to take the lead on the American Bankruptcy Institute’s study on individual chapter 11s gave all of us comfort that she would do a superb job. Her work on the Bloomberg bankruptcy law treatise was classic: well-written and thoroughly researched. She’s a top-notch bankruptcy scholar.

If you’d like to hear Margaret’s quintessential voice, take a look at her keynote address, *The Law of Unintended Consequences*,¹ in which she rips the 2005 amendments to the Bankruptcy Code to pieces. In that piece, she also foreshadowed the current political climate:

* Nancy B. Rapoport 2016. All rights reserved.

1. Margaret Howard, *The Law of Unintended Consequences*, 31 S. ILL. L.J. 451 (2007).

This is, perhaps, just another verse in an old song—namely, that people who are already committed to certain viewpoints tend to reject ideas inconsistent with those preconceived notions. This has been demonstrated, over and over, since the early 1960s, when Thomas Kuhn, in *The Structure of Scientific Revolutions*, reported an experiment asking people to identify playing cards, some of which were the wrong color. A red 6 of spades, or a black ten of hearts, for example. More than ten percent of the test subjects were unable to adjust their expected categories; they would identify these as normal cards, even when allowed to look at them forty times as long as it took to identify the cards that actually were normal.

And in more recent times, Drew Weston, a psychologist at Emory, used brain-scan experiments to show that political partisans quickly spot hypocrisy and inconsistencies, but only in the opposing candidate. When the flaws in their own candidate were presented, their brains lit up in areas that are used to turn down negative emotions—the same areas that remind you how fattening ice cream is, when the store closed two minutes before you got there.²

In other words, Margaret provides insights in more areas than bankruptcy law alone.

Here's what I think new bankruptcy professors (and, for that matter, all new professors) can learn from Margaret—a “top 10” list of sorts:

10. Stake your reputation on your ability to follow through on your promises.
9. Read others' drafts and give helpful feedback.
8. Be willing to try new things.
7. Make people laugh, but not by being mean.
6. Don't neglect non-work interests; having a life makes you a better professor.
5. Be gracious to newcomers.
4. Support your friends.
3. Exhibit patience, even when you're frustrated.

2. *Id.* at 461–62 (footnotes omitted).

2. Expect good things from others.

and #1?

1. Hold yourself to high standards, and help others reach high standards themselves.

Thanks, Margaret, for leading by example. You've made academia a better place, and we're all grateful.

A Paean to Margaret Howard, A Professor's Professor

Charles J. Tabb*

In the law, the highest praise for an attorney is to be called a "lawyer's lawyer," or for a judge, "a judge's judge." Those rare individuals are the ones who inspire admiration, respect, and almost awe from their peers at the professionalism, fairness, fundamental decency, humility, and expertise that they exhibit throughout their professional career. Those are the lawyers and judges that other lawyers and judges wish they could be. Perhaps the exemplar of both a lawyer's lawyer and a judge's judge is Justice Lewis F. Powell, a Washington & Lee double alumnus who headed up one of the top firms in the country for almost forty years and then served honorably as an Associate Justice of the Supreme Court of the United States for fifteen years. To me, Margaret Howard—the Law Alumni Association Professor of Law at Washington and Lee University School of Law—is the consummate "professor's professor." If Justice Powell had been a professor, he would have been Margaret Howard. Professor Howard, like Justice Powell, has always treated the law—and the people whom the law impacts—with the respect and honor they deserve. Both Professor Howard and Justice Powell understood that the law, above all, is about humanity, about people, about the common good, and they viewed themselves as selfless servants to promote and enhance the quality of life in our society. Neither ever sought praise or acclamation for their efforts; their goal always was simply a job well done.

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In an illustrious teaching career spanning almost forty years, of which I have known her for nearly thirty, Margaret Howard has lived the life of a professor's professor every single day. I am certain that every word she has ever published was carefully chosen and thoughtfully researched and weighed in the balance. I am certain that she was totally prepared for every single class, every day, every week, every semester for those forty years. Those students who were lucky enough to have her know the truth of what I am saying. In her extensive public service—much done at a national level with the American Bankruptcy Institute (where she served with distinction as the Scholar-in-Residence in 2004) and the American College of Bankruptcy, where she was elected as a Fellow (the highest honor for bankruptcy professionals in this country)—Professor Howard, more than any professor I know, was able to build bridges and forge bonds between the too often disparate realms of practicing lawyers, judges, and academics.

As a fellow professor of bankruptcy law, I know that I have been able to count on everything that Professor Howard has ever published as thorough, trustworthy, balanced, and fair. In her research, she leaves no stone unturned. In her analysis, she considers every possible argument and counter-argument. If I am researching a topic on bankruptcy law, the very first thing I always do is look to see if any of three people had written on the subject: the late Professor John McCoid of the University of Virginia, Professor Jack Ayer of UC-Davis, and Professor Margaret Howard. If they have, I know that the heavy lifting has already been done.

To give one example (of many): around 1990, I was writing an article dealing with the discharge—the fresh start—in bankruptcy. Professor Howard's masterful 1987 article, *A Theory of Discharge in Consumer Bankruptcy*,¹ was my primary guide. As another example, a few years back, I joined the editorial board of a new project for a multi-volume treatise on bankruptcy being published by Bloomberg BNA, and had the privilege of inviting the authors I wanted to write the chapters for which I was

1. 48 OHIO ST. L.J. 1047 (1987).

responsible. Guess who was the very first person I called? If you guessed “Margaret Howard,” you were correct. I gave Margaret her choice of any or all of the chapters; she was, in sports terms, my “number one draft pick.” And she performed like a MVP; her chapters (on the discharge in sections 727 and 523 of the Bankruptcy Code and preferences in section 547) were extraordinary, the definitive work on those subjects. I had thought I knew a lot about those two particular topics, having written extensively about both. In reading Margaret’s magnum opus on each topic, I learned how much I had not known. I still have the handwritten note that the editor-in-chief of the whole project sent me upon receiving Margaret’s chapter on preferences: it began, “This is truly excellent.” And it was.

For years, I tried and tried to persuade Margaret to move laterally and join me as my colleague at the University of Illinois. If imitation is the sincerest form of flattery, perhaps trying to hire someone is a close second? Finally, Margaret told me that it was just too cold in Illinois and she was never going to leave her beloved South—and warmth—for the frozen tundra. My loss, as it turned out, was W&L’s gain, as she did move laterally, from her longtime home at Vanderbilt to W&L.

One aspect of Margaret’s writings (as well as her personality generally) that I especially appreciate is her passion and her sense of (in)justice and outrage. With Margaret, you will never be in the dark about where she stands. She cares. She cares about the law, and she cares about people. And in some of her scholarship about bankruptcy law those two intersect. Where a bad bankruptcy law also hurts real, live human beings, Professor Howard will be at the forefront of those decrying the imperfection of the law and its inhumanity towards people. One of my personal favorites on this score is an article she wrote for a symposium in 2007 in which we both participated. In *The Law of Unintended Consequences*, Margaret compared the 2005 bankruptcy amendments (the inaptly misnamed Bankruptcy Abuse Prevention and Consumer Protection Act of 2005) to, among other things, kudzu, the Exxon Valdez oil spill, and the Treaty of Versailles—in just the first two pages!²

2. 31 S. ILL. L.J. 451 (2007).

Do not let my words of praise suggest that Professor Howard is without flaw; she has an inexplicable love of Duke basketball. I need say nothing more on that sad point.

So let me tip my hat and raise my glass to my dear friend Margaret Howard, with congratulations and admiration for a career well done and a life well lived. Margaret, may you have “a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting [work].”³ You have “discharged” the obligations of decades of course assignments and committee work; you are now “exempt” from any and all faculty meetings, for eternity; and you may freely indulge your “preference” for gardening and singing. In the words of the old Irish blessing, “May the road rise to meet you, May the wind be always at your back. May the sun shine warm upon your face; The rains fall soft upon your fields. And until we meet again, May God hold you in the palm of his hand.” To Margaret Howard, the professor’s professor, and a dear friend, job well done.



3. Apologies to the iconic case of *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934).

Margaret Howard Tribute

Judge Eugene R. Wedoff*

In thinking about Margaret Howard, the first thing that comes to mind is her unique combination of ingredients: a refined and elegant gentility and a dogged insistence that she's right on the views she's espousing. I was able to work with Margaret many times in presenting educational programs and in serving on the executive committee of the American Bankruptcy Institute, and I was delighted to have many chances to experience both the warmth of her conversations and the effectiveness of her teaching. But as I look at the history of my contacts with Margaret, what seems most important is the quality of her scholarship.

Margaret and I first got together in connection with a 1997 hearing of the Bankruptcy Reform Commission. We were asked to join in presenting a paper and serving as witnesses on the topic of the bankruptcy discharge. What became the foundation for that effort was Margaret's law review article, *A Theory of Discharge in Consumer Bankruptcy*.¹ That article gave the clearest and most complete consideration of the rationales for individual bankruptcy relief that I had ever encountered. The article's introduction states its goal: "a coherent theory of discharge."² The theory that the article advances is based on a consideration of several discharge purposes that had been discussed in the literature, but not previously viewed holistically. Margaret's view was comprehensive: "[D]ischarge should be broadly available in order to restore the debtor to participation in the open credit economy, limited only as is necessary to prevent the skewing of economic decisions, whether to lend or to borrow, by the intrusion of irrelevant noneconomic factors."³ Using this principle as a guide to proper legislation, one of the article's significant recommendations was that student loans should generally be

* Retired bankruptcy judge from the Northern District of Illinois and current president of the American Bankruptcy Institute.

1. 48 OHIO ST. L.J. 1047 (1987).
2. *Id.* at 1048.
3. *Id.*

dischargeable.⁴ The Commission both cited the article and adopted this recommendation.⁵ The article certainly stuck with me, and as I've worked on later efforts to improve consumer bankruptcy law, it's one of my touchstones.

As a bookend to this first encounter, my most recent contact with Margaret was in a series of consumer law updates that she, I, and Judge William Houston Brown presented in seminars for bankruptcy judges hosted by the Federal Judicial Center. During the preparation for our 2015 presentation, Margaret told us that she was working on another project, an amicus brief in *Bank of America v. Caulkett*,⁶ pending in the Supreme Court. The Chapter 7 debtors in *Caulkett* had been allowed to avoid junior mortgage liens under Section 506(d) of the Bankruptcy Code because the liens were entirely unsupported by collateral value.⁷ The Supreme Court had earlier ruled, in *Dewsnup v. Timm*,⁸ that Section 506(d) could not be used to avoid one part of a junior lien that was unsupported by collateral value.⁹ The *Caulkett* debtors sought to uphold the result in their cases solely on the distinction between partial and total lack of collateral value. Margaret let us review her draft amicus brief, which made a much more fundamental argument—that *Dewsnup* was wrongly decided and should be overruled, so that to the extent of any lack of collateral value, a secured claim should be avoidable under Section 506(d).¹⁰ The brief is masterful. With the same exhaustive research and clear analysis as her discharge article, the brief shows that plain meaning and legislative intent both require overruling *Dewsnup*. Sadly, the Supreme Court never reached this issue, stating in a footnote that the debtor expressly declined to

4. *Id.* at 1087.

5. NAT'L BANKR. REVIEW COMM'N, FINAL REPORT § 1.4.5 (Oct. 20, 1997).

6. 135 S. Ct. 1995 (2015).

7. *Id.* at 1998.

8. 502 U.S. 410 (1992).

9. *Id.* at 417.

10. Brief of Professor Margaret Howard as Amicus in Support of Respondents, *Bank of Am. v. Caulkett*, 135 S. Ct. 1995 (2015) (Nos. 13-1421, 14-163), 2015 WL 860732 [hereinafter Howard Brief].

raise it.¹¹ Margaret's brief, though, remains an unparalleled source for anyone wishing to challenge *Dewsnup* in the future.¹²

One final thought. In all of her work, teaching, and writing, Margaret has blended another pair of somewhat contrasting goals: policy advancement and scholarly rigor. Margaret believes in the possibility of bankruptcy bettering the lives of people in financial distress. But in dealing with discharge and lien avoidance, and in many other aspects of bankruptcy, Margaret has used exacting scholarship to advance the goal of making bankruptcy do its job. The bankruptcy community—me included—could not have a better friend.



11. *Caulkett*, 135 S. Ct. at 2000 n.†.

12. *See generally* Howard Brief, *supra* note 10.

**Margaret Howard: A Teacher-Scholar in the Best
Tradition of Washington and Lee**

Robin Fretwell Wilson*

To reflect on the career of Margaret Howard, a treasured colleague and a dear friend, is a distinct honor.

Compassion for the less fortunate and those whipsawed by life led Margaret to bankruptcy as a discipline. Bankruptcy, she would say, “is an area of law . . . that when it works right can truly be a lifeline.”

Margaret blazed a path that women in the academy today take for granted. The first woman chair holder in the history of the Washington and Lee University School of Law, Margaret earned that honor by piling up accomplishments. She is the co-author of a leading casebook on bankruptcy law. She has authored dozens of articles in the premier law reviews and journals in her field, including *Northwestern Law Review*, *Notre Dame Law Review*, *Law and Contemporary Problems*, *Illinois Law Review*, and the *American Bankruptcy Law Journal*. She has served on some of the best faculties in the country, either as a tenured faculty member (Vanderbilt University) or a visitor, including Harvard University, Emory University, the University of Alabama, Duke University, and the University of North Carolina, the last two near her beloved home outside of Chapel Hill.

Margaret was elected to both of the prestigious law reforms bodies in the U.S., the American Law Institute and the American Bankruptcy Institute (ABI). In 2002, Margaret spent a year at the ABI in their much-respected Scholar in Residence program. Margaret’s connection to the ABI would only blossom—beginning in 2009, she served a three-year term as the ABI’s Vice-President. In 2015, the ABI recognized not only her long-time service but her “commitment to understanding and improving consumer bankruptcy law,” as the inaugural *and unanimous* recipient of the

* Roger and Stephany Joslin Professor of Law, University of Illinois College of Law. I am grateful for the help of my and Margaret’s friends and colleagues: Professors Robert Lawless and Ralph Brubaker of the University of Illinois College of Law, and Ms. Tammi Hellwig, Chief Deputy Clerk for the United States District Court for the Middle District of North Carolina.

Braucher Award. It is no surprise then that she was also elected to the American College of Bankruptcy, an honor reserved for a handful.

As the only other woman chair holder at W&L Law while I was there, I am acutely aware that Margaret opened new vistas for women willing to do the hard and sometimes lonely work that scholarship demands. Margaret opened these doors by being great.

And gutsy. Lists of accomplishments cannot convey Margaret's intellectual honesty and rigor. She is not afraid to dismantle what she sees as a wrongheaded decision by the United States Supreme Court, like *Dewsnup v. Timm*.¹ And neither will she shy from a good fight. In *The Law of Unintended Consequences*, Margaret called on the carpet Professor Todd Zywicki and Judge Edith Jones (also friends of mine) for relying on a report that was "not evidence, that's anecdote."² Zywicki and Jones, she charged, "rejected the findings of the best empirical work done to date on the subject of who files bankruptcy and why."³ Far be it from me to resolve such heavy questions of bankruptcy law. But I do know this: many would run from that fight, not engage it head on.

It is that impulse that has made Margaret so impactful and respected in her field. My colleagues in bankruptcy at the University of Illinois, Robert Lawless and Ralph Brubaker, point to Margaret's pioneering work on the "stripping down" of mortgages. On the heels of the U.S. Supreme Court's decision in *Dewsnup v. Timm*, which prohibited debtors from "stripping down" a home's mortgage to the home's value, requiring the debtor instead to pay the full amount owed, Margaret took the decision apart in a forty-page law review article with 98 footnotes, *Dewsnapping the Bankruptcy Code*,⁴ that she penned in a week. Margaret cautioned against the result. Houses are often worth less than their mortgages today, less so in 1992 before the housing crisis. As Professor Lawless notes, "some of the problems Margaret identifies in that article got

1. 502 U.S. 410 (1992).

2. Margaret Howard, *The Law of Unintended Consequences*, 31 S. ILL. U. L.J. 451, 460 (2007).

3. *Id.* at 461.

4. Margaret Howard, *Dewsnapping the Bankruptcy Code*, 1 J. BANKR. L. & PRAC. 513 (1992).

carried over into a later decision called *Nobelman*⁵ [which extended *Dewsnup* to home mortgages in Chapter 13] and likely exacerbated the recovery from the housing crisis.” Had *Dewsnup* gone the other way, *Nobelman* may also have. Later, “when the home mortgage crisis hits, many people are now underwater on their homes and need leverage to renegotiate home mortgages with recalcitrant (at best) banks,” but cannot. *Dewsnupping* pointed out the “pernicious consequences” of the Court’s decision long before the economic crisis hit.⁶ Professor Lawless explains: “*Dewsnupping* explored what may seem like legal arcana to nonspecialists, but it explored core rules in our bankruptcy system that later proved inadequate when the housing crisis hit.”

Margaret proved prescient in other pieces, too. Lawless cites *Bankruptcy Empiricism: Lighthouse Still No Good*,⁷ where Margaret indicts bankruptcy policymakers for taking preferred ideological positions rather than listening to hard data about the bankruptcy system.

Now, many law professors “profess” what the law should be. But the best, people like Margaret, strive to make their vision of the good a reality. After *Nobelman* and *Dewsnup*, the Supreme Court tackled the issue of “stripping off” wholly underwater secondary liens in *Bank of America v. Caulkett*.⁸ Margaret filed an amicus brief to the Court on behalf of debtors. “Providing debtors a ‘fresh start,’” she pointed out, “is not a mere slogan; it is consumer bankruptcy’s defining principle.”⁹ Margaret’s side lost, again. The court ultimately decided for the banks, putting an end to the “fresh start” Margaret hoped to provide debtors. But the fact the Margaret came

5. *Nobelman v. Am. Sav. Bank*, 508 U.S. 324 (1993).

6. *Id.* at 513.

7. Margaret Howard, *Bankruptcy Empiricism: Lighthouse Still No Good*, 17 BANKR. DEV. J. 425 (2001) (reviewing TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBOOK, *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* (2000)).

8. 135 S. Ct. 1995 (2014).

9. Brief of Professor Margaret Howard as Amicus in Support of Respondents at 38, *Bank of Am. v. Caulkett*, 135 S. Ct. 1995 (2015) (Nos. 13-1421, 14-163), 2015 WL 860732.

out on the losing side takes nothing away from the fact that she tried. Margaret is a scholar in action.

Margaret is as legendary for her graciousness as she is for her tenacity. When the *Washington and Lee Law Review* focused its annual symposium on Financial Services on the Fringe, I was their advisor. It was Margaret who identified Todd Zywicki as a voice that needed to be included. As the Law Alumni Association Professor of Law, Margaret used her status and moral authority to ensure that newer—and not so new—faculty were recognized for their accomplishments. She prepared countless tenure files with the care most reserve for their own Curriculum Vitae. She was quick to throw a dinner party for the newest tenured faculty member, the newest chair holder, the newest addition to the faculty.

The same compassion that led Margaret to bankruptcy as a discipline led her to take new faculty under her wing. Bob Lawless recalls:

She won't remember, but I well remember her taking an extra 30 minutes late one evening to talk with me about an article on which I was working or her good cheer with my family on a particularly hot summer's day at the St. Louis Zoo. Margaret is an influential scholar but also a colleague in every sense of the word.

My colleague Ralph Brubaker echoed the sentiment:

What makes Margaret a true gem among scholars in our discipline, though, is Margaret the person. She was extremely helpful to me early in my career, when I was still trying to find my "voice" as a scholar and teacher. I continue to draw inspiration from her sage observation and counsel, and I greatly admire (and try to emulate as best I can) her ever-gracious manner and the genuine warmth and respect for others that she exudes. For me, Margaret is a model of incisive scholar, talented and devoted teacher, trusted colleague, and good person.

Washington and Lee prides itself on the fact that its faculty is a faculty of teacher-scholars. Few can match Margaret Howard in her commitment to students. She literally spends hours upon hours with students in her small writing section on their first year memos. Many have told me that they are the writers they are today because of Margaret.

With then-Professor Tammi Hellwig, for two years Margaret coached students in the Duberstein National Moot Court Competition. Margaret dove right in with her characteristic excitement and verve. And it was infectious.

Tammi explains:

Margaret had a way of just making the students want to succeed—you could tell they respected her and wanted to perform well for her. She embraced our time with the students during long moot sessions, very long traveling hours (with plenty of delays and hassles), and most particularly our dinners in NYC. Our Duberstein participants were so in awe of Margaret, that by the time the competition was over, they cared more about how Margaret thought they performed than how they placed. She brought the best out in every one of them—personally and professionally.

When we survey our work and our lives, one metric is whether we exceed our parents' greatest hopes for us. The daughter of a Methodist minister, Margaret grew up in the parsonage. Her parents scratched and saved so that she could attend Duke and later law school at Washington University. Who could have imagined that one day she would be so prolific a scholar and have touched the lives of so many students and colleagues? I have to think her parents would be brimming with pride.

With warm wishes for the next phase of her amazing life,

Robin Fretwell Wilson