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Address by Judge Edward Weinfeld

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Abstract

This is a transcript of Judge Edward Weinfeld's acceptance of the 1985 Fordham Stein Award.

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The warmth of this presentation has touched me deeply. That a judge who functions at the lowest level of the federal judiciary should be added to the roster of prior recipients of the Fordham-Stein Award—which includes: Chief Justice Warren Burger and Associate Justice Potter Stewart of the Supreme Court of the United States; my close friend, our own highly respected and revered Henry J. Friendly, Circuit Judge for the Second Circuit; a former Attorney General; a former Solicitor General and Assistant Attorneys General of the United States, one of whom played a significant role in the release of the Iranian hostages—envelops me with a feeling of deep humility.[1]

Additionally, the Award bears the name of a prestigious law school and one of its loyal and distinguished alumni, Louis Stein, an outstanding humanitarian and a generous benefactor. Add to that the overgenerous remarks made by Dean Feerick and Paul Curran about my service as a district court judge,[2] and I am sure you understand that I am overwhelmed—that my cup of joy truly runneth over—and how difficult it is to make an adequate response.

However, it would be idle for me to suggest that as this day approached I had not given some thought to an appropriate response. Memories flooded in; one thought crowded out another. They ran the gamut from the earliest days of my childhood to the very moment of thought. The range of possible subjects was far and wide. I decided to eliminate any serious discussion of current problems confronting our courts and nation, particularly at this time when, unfortunately, the Supreme Court and its likely future membership have been injected into the current political campaign.[3]

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* United States District Court Judge, Southern District of New York.

1. These remarks were delivered on November 1, 1984, upon presentation of the Fordham-Stein Award to Judge Weinfeld. The Fordham-Stein Award was established as a national prize to render public recognition to the positive contribution of the legal profession to American society. This prize honors individuals whose personal commitments and achievements bring credit to the profession, and thereby gratefully commends the vigilance and nobility of spirit of the bench and bar. Previous recipients include: 1976, Henry J. Friendly; 1977, Edward H. Levi; 1978, Warren E. Burger; 1979, Wade H. McCree, Jr.; 1980, Archibald Cox; 1981, Warren M. Christopher; 1982, William H. Webster; 1983, Potter Stewart.

2. John Feerick is the Dean of the Fordham University School of Law, and Paul Curran is the President of the Alumni Association.

3. This speech was given just prior to the 1984 election in which Ronald Reagan was elected to a second term as President of the United States. A major issue of the political campaign was the fact that five Justices of the Supreme Court at that time were over the age of 74. The likelihood that the next President would

As I look at this audience, which includes many whom I have known personally and worked with through the years, I feel free to talk in an intimate way as if I were talking to family and friends. So I have decided to confine my remarks to my career and my experience at the court.

From the time I was a youngster old enough to think about a career, I always wanted to be a lawyer; I never had any doubt about it. Happily for me, there has been total fulfillment of that boyhood dream, both in my career as an active practicing lawyer, in public service, and in my tenure at the the court, all covering a span of more than sixty years.

As the Good Book tells us, we start at the beginning. I practiced law as a single practitioner for twenty-seven years before my appointment to the court. I do not believe that such a practice is feasible today. The field of law has proliferated into many different areas which require special training and expertise to adequately represent a client's interests.

My practice was general, in civil and criminal law, and in all courts, federal and state. It was exciting and stimulating. An attorney not only obtained the clients, but he also drafted his own pleadings, motion papers and trial briefs; he interviewed the clients and the witnesses in preparation for trial and tried the case, jury or nonjury; he wrote the appellate brief and argued before the higher courts—the Circuit Courts of Appeals, the New York State Court of Appeals, and the Appellate Divisions.

It was hard and concentrated work with long hours, but it was satisfying and rewarding. The relationship was more than that of lawyer-client; in effect, the attorney acted as the client's psychiatrist and family advisor. At times, the attorney performed the same service rendered by the old-time physician whose bedside manner meant so much to his patients. The attorney not only got to know the client but also met the members of his family.

This close relationship with the client imposed a heavy responsibility on the lawyer who knew that the success or failure of his service

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have the opportunity to appoint a significant number of Justices attracted much attention, primarily concerning fears of Democrats and other Reagan opponents that Reagan, "if re-elected, would reshape the Court to his 'far-right political ideology.' " L. Greenhouse, *Taking the Supreme Court's Pulse*, N.Y. Times, Jan. 28, 1984, at 8, col. 3 (quoting Senator John Glenn). For an example of strong views on this subject, see the following exchange between Floyd Abrams and Attorney General William French Smith: N.Y. Times, Feb. 23, 1984, at 23, col. 1; N.Y. Times, Mar. 18, 1984, § 4, at 20, col. 3; N.Y. Times, Mar. 25, 1984, § 4, at 20, col. 4.

meant either joy or disaster in the client's life and that of his family. It was a thriving practice which I thoroughly enjoyed.

There were two interruptions in my law practice, each of which had its separate reward. The first occurred when I was elected a delegate to the 1938 New York State Constitutional Convention, which was in session for six months.[4] It was a great experience. In that convention the delegates faced important issues about the relationship between government and the individual.[5] Active participation on committees and in debates on the convention floor gave me a feeling akin to that which the delegates who labored in Philadelphia through the hot summer of 1787, furthering our federal Constitution, must have experienced.

Since that year, I have continued to believe that the 1938 state convention left the people of New York an important legacy in new constitutional protections against arbitrary invasions of the home and arbitrary interferences with religious liberty. The convention proposed a social welfare program which included state-sponsored public housing and which was adopted by the people of the state.[6]

My next excursion out of the law took place in July 1939 when Governor Lehman persuaded me to suspend my practice and serve as a member of his cabinet to set up New York State's public housing program, the first of its kind in the United States.[7] I served

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4. The New York State Constitutional Convention met in Albany from April 5 through August 26, 1938. The proposed constitution was divided into nine amendments for submission to the voters at the November 8, 1938 general election. *See* N.Y. CONST. art. 1, §§ 1-6, at ix (McKinney 1982) (historical background of constitution). The history of the 1938 Constitutional Convention and its proposed amendments is available in the REPORTS OF THE N.Y. STATE CONSTITUTIONAL CONVENTION, 1938, vols. 1-12. The debates and proceedings of the Convention are available in N.Y. STATE RECORD, JOURNAL AND DOCUMENTS, 1938, vols. 1-5.

5. These issues related to low-rent housing, the use of state money and credit for social welfare, the rights of labor, legislative apportionment, and proportional representation. *See* N.Y. CONST. at ix-x (McKinney 1982) (historical background of constitution).

6. The proposed amendment relating to public housing, article XVIII of the constitution, was approved by the voters in the general election of November 8, 1938. Since that time only minor changes have been made to the article. *See* N.Y. CONST. art. XVIII, §§ 1-10 (McKinney 1969 & Supp. 1984-1985); *see also* STATE OF N.Y., PUBLIC PAPERS OF GOVERNOR HERBERT H. LEHMAN 27-28 (1939). Governor Lehman's Annual Message to the Legislature on January 4, 1939 described the state's new long-range housing plan. This plan was expressed in the new constitutional provisions which granted the state and its subdivisions "broad and effective financial powers which enable[d] them to build decent homes for families of low income, and to clear, replan and reconstruct slum areas." *Id.*

7. In 1939, the New York State Legislature enacted Public Housing Law, L. 1939, ch. 808 (current version at N.Y. PUB. HOUS. L. §§ 1-228 (McKinney 1955 & Supp. 1984-1985)). Edward Weinfeld was appointed as Commissioner of Housing

in that office for more than three years. It was a pioneering program under which $300,000,000 in loans and subsidy commitments of $5,000,000 annually over a period of years were distributed to communities throughout the state to make housing available to families of low income and for clearance of slum or substandard areas.[8]

The administration of the Office of Public Housing was one of the rare experiences of my life, the more so because of my close working relationship with the Governor, who was "a man of matchless courage and rare integrity."[9] As his colleagues in the United States Senate stated, Governor Lehman "was the very conscience of the Senate of the United States." My experience as New York State's Commissioner of Housing was so rewarding that I have often wondered why I resisted the Governor when he first urged me to take on that post. The administration of that office added immeasurably to my practical knowledge.

When the Governor was called upon by President Roosevelt to head the United Nations Relief and Rehabilitation Administration,[10] I declined a request to continue as Commissioner of Housing, and in 1943 resumed my legal practice. I again found contentment and satisfaction in practice which I continued until my appointment to the federal district court in August 1950.

My years at the court have been the most challenging, rewarding and satisfying of my entire professional career. Service as a judge at the district court level is in sharp contrast to service on the appellate level, where one functions as a member of a collegial group of three, five, seven or nine judges.

The trial judge sees the actual litigants and their witnesses and

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on July 13, 1939. *See* STATE OF N.Y., PUBLIC PAPERS OF GOVERNOR HERBERT H. LEHMAN 406-07 (1939).

8. N.Y. PUB. HOUSING LAW §§ 70 to 76-a (McKinney 1955 & Supp. 1984-1985) established state aid in the form of subsidies and loans for low-income housing and slum clearance.

9. Eulogy given by Honorable Edward Weinfeld for Honorable Herbert H. Lehman on December 8, 1963 (unpublished).

10. Former Governor Herbert H. Lehman was appointed by President Roosevelt as Director of Foreign Relief and Rehabilitation on November 21, 1942. N.Y. Times, Nov. 22, 1942, at 1, col. 3. Initially, this appointment was purely under the auspieces of the United States and Lehman was put "in charge of plans and policies for the relief of the destitute of Europe, Asia and Africa and for the industrial and agricultural rehabilitation after the war of countries that have been under the heed of the oppressor or have felt the miseries of war." *Id.* Later, he was chosen as Director of the United Nations Relief and Rehabilitation Administration which was established in November, 1943 for the same goals. N.Y. Times, Sept. 26, 1943, at 1, col. 1.

decides the facts.[11] In jury cases, he shares responsibility with citizens who are called upon to play a role in the administration of justice. Important and unimportant cases do not exist; each case is important, and each is demanding. Indeed, this is the first lesson that I learned in practice, and it is the first lesson that I impart to my law clerks: each case is important, whether or not it will make new law, because the outcome can bring either triumph or disaster to the litigants and their families.

The trial judge knows that his final judgment may have a profound impact on individuals who have appeared before him. It will affect their well-being for better or for worse, their property, their reputation and, at times, their very liberty. Indeed, the daily grist of cases runs the gamut of every conceivable problem of law and society.

In addition to the conduct of jury trials and the preparation of charges, there is of course the matter of opinions after nonjury trials or upon substantive motions in diverse areas of law. This process, in large measure, parallels that aspect of the functioning of the appellate judicial process but with the singular difference that the trial judge acts entirely on his own. He does not exchange views with members of a panel, whether by conference or by memorandum, to discuss differences of views with equals in an attempt to reach an accommodation. His sole companions are his law clerks. After a study of the record, briefs and research, he may receive comments or be challenged by the acute minds of his clerks. I am often amazed by the depth of knowledge of these recent law school graduates.

Then there is the final analysis, sometimes of agonizing concern, particularly where liberty or life is at stake. The judge confidently hopes that he has reached the right, fair and just result within the law. That final and ultimate ruling is his alone. It is not a shared effort with a peer. The trial judge treads a lonely path; ofttimes it is a soul-searching vigil. Thus, service at the trial level is markedly different from that performed by the appellate judge. It is challenging and demanding, yet it is also a rewarding and fulfilling experience. I truly believe that there is no more satisfying service in the entire judicial system than that experienced by the trial judge.

I came across an item the other day in a volume entitled *Felix*

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11. For an analysis of the work done by trial judges, see J.P. RYAN, A. ASHMAN, B.D. SALES, & S. SHANE-DUBOW, AMERICAN TRIAL JUDGES (The American Judicature Society 1980).

Frankfurter Reminiscences,[12] which makes the point rather graphically. It focuses on Mr. Justice Holmes's opinion in the famous *Pipeline Cases*,[13] in which the litigants were the United States government and the Standard Oil Company.

Although the government prevailed, the rationale of the ruling had drawn rather sharp criticism from Professor Thomas Reed Powell of Harvard Law School, whose caustic comments on Supreme Court decisions were well known and usually imparted in the first instance to his students.[14] On this occasion, Powell's barbs were directed at the philosopher-jurist who authored the opinion: Justice Holmes. Frankfurter, then also a professor at the law school, was aware of Powell's severe criticism of the Holmes opinion.[15]

Years later, after Holmes's death, Frankfurter, then a United States Supreme Court Justice, came into possession of Holmes's private papers, in which he found a handwritten note by Holmes which acknowledged that the *Pipeline* opinion was "wholly unsatisfactory."[16] The note stated that Holmes reluctantly had modified his original draft to gain the approval of his colleagues, and that had he not yielded, the case would not have been decided that Term, with the risk of a contrary ruling if decided later.[17]

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12. FELIX FRANKFURTER REMINISCENCES (1978) [hereinafter cited as REMINISCENCES].

13. 234 U.S. 548 (1914).

14. REMINISCENCES, *supra* note 12, at 292-94.

> Tom Powell had an acute critical mind, a very questioning mind, and he was also witty. He could dash off happy doggerels. He was a general-store debater, smart, puncturing the other fellow, delighting in repartee, but very much better than that . . . . McReynolds, Butler, Sutherland and Van Devanter were setups for him—clay pigeons! They are a perfect illustration of that against which de Tocqueville warned us, not to confuse the familiar with the necessary . . . . He did great service in connection with this in his vigorous analysis of language, in his exposure of the emptiness in and beneath phrases, the illogicalities. He had a very good, tough, dialectical mind. This was wonderful training for students who came, as most students did come, with all the uncritical, half- or quarter-education most lads brought . . . . Powell was the fellow who pierced them. He lanced all these pretensions. He encouraged the habit of questions, of inquiry, of logicalities—not formal logicalities, though he was a master of that. He was very effective in utilizing formal logic as a destructive instrument.

Id. at 293-94.

15. *Id.* at 296-97.

16. *Id.* at 298.

17. *Id.*

> I don't believe that there is another instance in which a member of the Supreme Court, . . . analyzed and characterized with such naked candor

John W. Davis, who as Solicitor General had successfully argued on behalf of the government, reported a conversation with Justice Holmes shortly after the *Pipeline* decision was announced. Evidently, the venerable Justice Holmes had been brooding about his handiwork in that case, and commented to Davis: "I write out my opinions, and I send them around to my brethren. One of them picks out a plum here, and the other picks out a plum there, and they send it back to me with nothing but a shapeless mass of dough to father!"[18]

Well, we lowly district court judges, in addition to conducting trials, father our own opinions. And no colleague picks a plum here and a plum there; the product is ours and ours alone. At times a higher authority may declare them illegitimate—we hope not too often—but even so, we know the child is our own. It is that individual effort, both in the conduct of trials and writing opinions, that reflects one's own deliberative and solitary judgment.

In sum, my feeling about the Southern District of New York, and indeed I say this with great humility—some of you have heard me say this on other occasions—is that my colleagues and I are privileged to sit on one of the great courts of the United States. It was the one court to which I aspired; that aspiration was not happenstance.

I tried my first case as a fledgling lawyer in 1923 before Judge John C. Knox, and thereafter had a fairly substantial practice in the federal courts. It was that experience that gave me the depth of reverence for the Southern District of New York.

You *knew* that you were before dedicated judges; you *knew* you were in a temple of justice that exemplified the highest legal tradition. You *knew* that in each case the guiding rule was the instruction that Moses, the great lawgiver, enjoined upon the captains of the tribes of Israel: "Ye shall do no unrighteousness in judgment: thou shalt not respect the person of the poor, nor honour the person of

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> an opinion of his own as "unsatisfactory" and gave the reasons why . . . he yielded to having his name put to such an opinion; namely, that if he hadn't done that, the case would not have been decided that Term with the risk of being adversely decided later. It would have gone over, and the important point was to get an adjudication which would sustain the statute. The vital fact is that the statute was sustained. When you have at least five people to agree on something, they can't have that comprehensive completeness of candor which is open to a single man, giving his own reasons untrammeled by what anybody else may do or not do if he put that out.

Id.

18. *Id.* at 299.

the mighty: *but* in righteousness shalt thou judge thy neighbor."[19] Some of you may recognize that the substance of these instructions is the oath that all federal judges take upon assuming office.[20]

I trespass upon your time to relate two incidents which make the point about the stature of our court. When it appeared my nomination to the court was fairly imminent, Senator Lehman, who, as many of you know, sponsored and was responsible for my appointment, rather quizzically questioned me. He said, "Eddie, I don't understand why you want to go to the federal court, where the salary is $15,000." He added, "I think I still have enough influence locally so that you can be nominated for the State Supreme Court, where the salary is exactly double, $30,000."

I then explained to him the depth of feeling about the Southern District of New York and why it was the only court that I wanted to serve on. I shall never forget his response: "You know, the only person I ever heard talk about a court with such a deep feeling of reverence is my brother Irving." Irving Lehman had been a distinguished and outstanding Chief Judge of the New York State Court of Appeals.[21]

The second incident occurred when I was still one of the freshmen at the court. Judge Knox, who served as Chief Judge of our court longer than any other Chief—at that time there was no compulsory age limit for a Chief Judge of either the district court or the court of appeals[22]—had decided to retire; it was early in 1955. A legal

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19. *Leviticus* 19:15, *cited in* Griffin v. Illinois, 351 U.S. 12, 16 n.10 (1956) (emphasis added).

20. 28 U.S.C. § 453 (1982) requires that:

> [e]ach justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, ___ ___, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ___ according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God."

Id.

21. Judge Irving Lehman was elected to the New York Court of Appeals in November, 1923 and succeeded his friend Benjamin N. Cardozo as Chief Judge of that court in 1940. Judge Lehman had been a justice of the N.Y. Supreme Court for 15 years prior to that election. E.H. LEWIS, THE CONTRIBUTION OF JUDGE IRVING LEHMAN TO THE DEVELOPMENT OF THE LAW 9, 11 (The Ass'n of the Bar of the City of New York 1951).

22. Generally, federal district court chief judges are required by law to retire from the position of chief judge after attaining the age of seventy years. 28 U.S.C.

fraternity of which Knox was a member held a private dinner in his honor, limited to the brethren of the fraternity. However, an exception was made and the Judge was granted the privilege of inviting three members of the federal judicial hierarchy. His invitees were John M. Harlan, then the Supreme Court Justice nominee-designate, Learned Hand, who had recently retired as Chief Judge of our court of appeals, and myself.

For a freshman at the court, it was a flattering invitation. There were some vague assurances that the invited guests would not be required to make speeches, and of course, it turned out otherwise. I was called upon first. Naturally, I talked about the Southern District and expressed my feelings about the court as I have stated them to you this evening. And at one point, turning to the Justice at my right and then to the Chief at my left, I said, "Meaning no disrespect to these outstanding jurists whom I venerate, or to the great courts on which they serve, I think the greatest court of the United States, barring none, is the Southern District of New York."

Hand was called on next, and I thought the wrath and thunder of the gods, of which he was so capable, would pour down on me for what some might deem a sacrilegious utterance. The Chief stood up, put his hand on my shoulder and said, "Ed, you never rendered a more solid judgment and if from here out, all your rulings are as sound, you will never be reversed." And then he went on and talked about his fifteen years of service as a district court judge until his appointment to the court of appeals, and wound up as follows: "I do not hesitate to say before this audience that with the exception of appointment to the Supreme Court of the United States, which for reasons that are not important I did not achieve, I wish I were back at the district court—it is indeed a great court."

The tribute of your regard for my service on that court I share with my colleagues, those who now serve and those who have preceded us. Each by his or her dedicated service has added luster to the court's fame and has contributed to its preeminence in the nation's judiciary. My experience at the court has been enriched by meaningful friendships, not only with my own colleagues, but with

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§ 136(a)(3)(C) (1984). However, a district court judge may serve or act as chief judge after attaining the age of seventy years if no other judge is qualified to serve as chief judge. *Id.* The requirements which must be met to serve or act as a chief judge are set forth in the United States Judicial Code and Judiciary Act. 28 U.S.C. § 136(a)(1), (2) (1984). A similar provision exists for federal circuit court chief judges. 28 U.S.C. § 45(a)(3)(C) (1984).

those who serve on the higher level and who correct my errors and reverse my judgments.

The joy of judicial life also has been increased immeasurably by close association with my law clerks, who now number fifty. Each has been a soldier in the ranks and made his or her valuable contribution in lessening the heavy demands of office. I glow with pride not only because of their successes in their respective endeavors, but more important, for the close and affectionate relationship that my wife and I have with their families; we regard them as members of our family.

This occasion also affords me the opportunity to pay special and public tribute to one who, with great understanding, has shared the stresses and strains of my office for a quarter of a century—my secretary, Marie Vollrath. Much beyond the call of duty she has helped lighten the burdens of the day. She has been a tower of strength in my daily endeavors. She has presided over the changing of the guard—when one clerk leaves and his or her successor takes on. She has the affection of each and every one of us.

My thirty-five years at the court have been the fulfillment of a boyhood ambition to serve the rule of law. The hours have been long and demanding, but in no respect has this diminished the joy of service. Some say it is hard work. I call it a labor of love—a privilege to serve as a minister of justice.

Now and then, a well meaning friend, concerned that perhaps I am overworking, suggests that I take it easy, which I presume means I ought to take senior status for which I have now been eligible for nineteen years. My response is simple. I explain that when, at a fairly early hour of the morning, I put the key into the door of my darkened chambers, switch on my lights and walk across the room to start the day's activities, I do so with the same enthusiasm and excitement that was mine the very first day of my judicial career—a day I shall never forget—when my predecessor and dear friend, Judge Simon H. Rifkind, invested me with the robe of office. I tell my concerned friends that what one enjoys is not work but rather joy; the immense satisfaction that one is privileged to play a daily role in that noblest of callings which is the rendition of justice.

A final word. There is an old saying—some think it is trite, but I think it is true—wherever there is a sucessful man, look for the woman. Those of you who have never had the experience of public service, whether in the judicial, legislative or executive branches of government, are perhaps not aware of the sacrifices made by the spouses and families of those in public service. There are long hours

away from home, short vacations and even interrupted vacations and the denial in some measure of the ease of normal family life. The spouses make a positive sacrifice when the partner's demands of office are heavy, as they are at the court. I have been especially blessed that my young bride of fifty-five years, during my career both as a lawyer and as a judge, has been more than understanding. Through the years, I have had her warm support and encouragement. She has made a significant contribution to furthering my career. I can best describe that by describing a brief incident.

I do not recall now whether it was the *Austrian v. Williams*[23] case or the *Bethlehem Steel*[24] case. My staff and I worked on the opinion for many weeks after court hours, night after night, Saturdays and Sundays. The final page proofs were delivered to chambers at 1:00 a.m., and I arrived home shortly thereafter with my brainchild on which I had inscribed these words: "To my life's companion, who played a significant role in authoring this opinion."

My wife has been a caring and sacrificing helpmate for over half a century. Many of you know her, but some do not. My daughters also have been supportive of my wife and me with great understanding. Ann is a practicing lawyer, and Fern is a doctor, a practicing psychologist. Both my daughters and Fern's husband, Dan Cohen, and also Alvin Schulman have indeed been understanding. And, finally, I am proud to say that we have five grandchildren. Three are at college, but two are here—my oldest grandchild, Amy, and my youngest, Joshua.

This has been an unforgettable event, the memory of which I shall always cherish. It leaves me greatly in your debt. It is my prayer that in my remaining years of judicial service I shall earn and be worthy of your continued approbation.

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23. 103 F. Supp. 64 (S.D.N.Y.), *rev'd,* 198 F.2d 697 (2d Cir.), *cert. denied,* 344 U.S. 909 (1952) (original action involved suit by plaintiff Trustees in reorganization of Central States Electric Corporation, charging defendants, principal stockholders and various officers and directors of corporation, with breaches of fiduciary duties). Defendants' motions for attorneys' fees granted in 120 F. Supp. 900 (S.D.N.Y. 1953).

24. United States v. Bethlehem Steel Corp., 168 F. Supp. 576 (S.D.N.Y. 1958) (suit brought by government to enjoin merger between Bethlehem Steel Corporation and The Youngstown Sheet and Tube Company on grounds that merger would violate section 7 of Clayton Act).