

# *Fordham Journal of Corporate & Financial Law*

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*Volume 10, Number 1*

2004

*Article 1*

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## The Eleventh Annual Fordham Corporate Counsel Association Dinner and the Presentation of the Richard J. Bennett Memorial Award: Remarks by Michael Saperstein, Recipient of the Richard J. Bennett Memorial Award, October 14, 2004

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## REMARKS

BY MICHAEL SAPERSTEIN\*  
RECIPIENT OF THE  
RICHARD J. BENNETT MEMORIAL AWARD†  
OCTOBER 14, 2004

MR. SAPERSTEIN: Good Evening Ladies and Gentlemen. Thank you, Dean Treanor,<sup>1</sup> your words were most gracious and very much appreciated.

I want to introduce the people who are precious to me. My family: my daughter Kim, my son-in-law Jason, my grandsons Aaron and Beno, and my 14-month old granddaughter, Alexandra, who is at home asleep. Being close to my family emotionally and geographically is my greatest good fortune.

It is an honor to receive the Richard J. Bennett Memorial Award. This evening, I was asked to describe why I chose to study law and then pursue a career in investments. I was also asked to discuss the importance of ethical behavior. I will begin by sharing with you my path from college, to law, to banking. I will also comment on certain activity by the legal community.

I was born in 1941 and lived for thirteen years on Grand Street,

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† The Richard J. Bennett Memorial Award recognizes corporate leaders with the highest standards of ethical conduct, moral purpose and selfless commitment. It is dedicated to the memory of Dick Bennett (Fordham Law, Class of 1942), who established himself as a nationally recognized corporate leader during his exceptional career at Schering-Plough Corporation, where he served as General Counsel, then President and Chairman.

1. William Treanor, Dean of Fordham University School of Law since July, 2002.

known as the Lower East Side.<sup>2</sup> At that time the neighborhood was not the trendy spot that it has become. My mother and father were first generation Americans and they were not able to attend college. My father owned a store on Hester Street which stocked canned goods, smoked fish and other delicacies. Dad had the place open seven days per week. At 5:00 A.M. each day, he went to the market and, each day, arrived home fifteen hours later. I cannot remember a holiday, other than certain Jewish holidays, that my dad did not spend working. Though they lacked a formal education, both of my parents were highly intelligent. They also exhibited an incredible work ethic and superb values. My parents assured me that with a good education, I could have an easier life. But, of greatest importance were the values they espoused.

Those values were the three C's – Courage, Character and Commitment. I was told never to quit, never to fear failure, and never to get intoxicated by success. I was encouraged to identify my goals and pursue them with passion. I was cautioned that success could only be sustained if accompanied by honesty. To lie, to cheat or to be dishonest was to be a coward. I was lucky to be exposed to this wisdom at an early age.

As I grew up attending public school, my passions were baseball and the financial section of *The World – Telegram and Sun*.<sup>3</sup> In 1958, I was accepted to Colgate University. While at Colgate, I realized that because of my exposure to Dad's business, I was driven to pursue a business career. But, I knew I wanted to attend graduate school and I had to decide between law school and business school. I concluded that a legal education provided greater career opportunities. Lawyers are represented as leaders in every field: business, major league managers, police officers, and politicians. Some lawyers even practice law. After graduating Colgate in 1962, I was fortunate to be accepted by Fordham

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2. "New York's Lower East Side [is] a neighborhood built by immigrants that has traditionally welcomed newcomers from all parts of the globe. For more than a century-and-a-half, Manhattan's Lower East Side has been known as the place where immigrants have come to take their first steps on the road to the American dream." *available at* <http://www.thelowereastside.org>.

3. *THE NEW YORK WORLD – TELEGRAM AND SUN* was created in 1931 by the merger of *THE WORLD* and *THE EVENING SUN*. In 1966, it became a component of the *NEW YORK WORLD JOURNAL TRIBUNE*, which dissolved in 1967 *available at* <http://www.loc.gov/spcoll/174.html>.

Law. My education in the law trained me to think logically and practically. Case studies conditioned me to anticipate an opposing opinion. After graduating Fordham Law in 1965, I spent a brief period at the Office of the Corporation Counsel in New York City.<sup>4</sup>

On a slightly rainy evening in April of 1966, I decided to go to Yankee Stadium and my life changed dramatically. The Yankees were playing the Washington Senators and there were very few fans in attendance. It was at this game that I met Richard M. Nixon. At the time, Mr. Nixon was a private citizen practicing law as a partner at Mudge Rose.<sup>5</sup> He had lost to Kennedy in 1960, and then lost the race for governor of California in 1962. Still, when I met Mr. Nixon at that game I was convinced he would again seek the Presidency. I asked to be a volunteer in what I anticipated would be his campaign. Being a Fordham Law graduate caught his attention. In a typical Nixon response he told me that a lot of great people came out of that school and that his closest buddy, his partner John Mitchell, was a Fordham Law graduate.

The evening was surreal. Only years later would I appreciate its full impact. Afterwards, my career would take a clear direction and I would meet, know, and befriend historic figures. After the game, Mr. Nixon offered me a ride home. I lived in a studio apartment, on the ground floor, formally the janitor's, on York Avenue. Mr. Nixon was impressed and, for two years, I became the most obsessed "go-for" one can imagine. I ordered pizza, cut out articles, and eventually was assigned to do research for Nixon and his group of advisors who would meet at Mudge Rose, and sometimes even at his apartment.

In January 1969, Richard Nixon was sworn in as President. Three months later, I received a call from a counsel to the President who urged me to go to Washington and join the Securities and Exchange

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4. The New York City Law Department, Office of the Corporation Counsel was first established by the Charter revision of 1849. The current Corporation Counsel oversees more than 650 attorneys in 17 divisions, including diverse areas like Environmental Law, Contracts, Family Court, Labor & Employment, Tax & Bankruptcy and Tort. The Corporation Counsel also serves as legal advisor to the Mayor and all city agencies. The Law Department has offices in all five boroughs with its headquarters at 100 Church Street, New York, New York 10007-2601, (212) 788-0303 *available at* <http://www.nyc.gov/html/law/html/ccmsg.html>.

5. In 1963, Nixon joined the law firm of Mudge, Stern, Baldwin, & Todd. The firm later became known as Mudge Rose Guthrie and Alexander and Ferdon LLP. The firm has since dissolved.

Commission (SEC). The chairman at the time was Hamer Budge, who soon left and the President appointed William J. Casey, who was also a graduate of Fordham, to be SEC Chairman.<sup>6</sup>

Mr. Casey was brilliant. He was a tax lawyer, a fabled spy in the Office of Strategic Services (OSS)<sup>7</sup> under “Wild Bill” Donovan,<sup>8</sup> and a very successful venture capitalist. Mr. Casey was also controversial. His confirmation in the Senate was anything but tranquil. As the process began, I received a call from John Dean. Dean suggested that I assist Mr. Casey with his confirmation. In the end, Mr. Casey was successfully confirmed as SEC Chairman. He would go on to be the President of the Export-Import Bank and finally Director of Central Intelligence under President Reagan.<sup>9</sup> We remained great friends, throughout.

As SEC Chairman, Casey complained about the volume of written No-Action Requests by insiders of public corporations wishing to sell stock. The insiders had to explain in writing to the staff of the SEC what were then known as “Special Circumstances.” The staff took an average six months to respond. Mr. Casey asked me to coordinate and draft a regulation that would eliminate these written No-Action Requests. As a result, Rule 144 was enacted.<sup>10</sup> My Fordham law degree was becoming more useful by the day.

At the SEC, my passion was realized. I knew I had to go to Wall Street. There I would apply my legal training and pursue investments. It was Mr. Casey who introduced me to Bear Stearns in late 1972. The vetting process took about four months and no wonder: I gave only Nixon officials as references! Many were sentenced to prison during this era. Executives at Bear Stearns who wished to inquire about my character were told to call at a certain hour, provide a numbered identity for my reference and could only speak for five minutes. As a result, my joining the firm was not without notice. Nobody at Bear Stearns

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6. William J. Casey served as Chairman of the SEC from April 14, 1971 to February 2, 1973, *available at* <http://www.sec.gov/about/concise.shtml#history>.

7. The Office of Strategic Services, formed during World War II, was a precursor to the Central Intelligence Agency.

8. William J. Donovan, appointed by President Franklin D. Roosevelt, led the Office of Strategic Services from its inception in 1942 until its dissolution in 1945.

9. William J. Casey served as Director of Central Intelligence from January 21, 1981 to January 29, 1987.

10. 17 C.F.R. § 230.144 (2004).

expected normalcy from me. And, I never let them down.

At Bear Stearns, I found home. The three C's of Character, Courage and deep Commitment were ingrained in the firm by Alan Greenberg and his successor Jimmy Cayne. Under Jimmy Cayne's forceful, focused leadership, Bear Stearns has thrived. When I arrived in 1973 employment was under 500; today it is well over 10,000. The firm's capitalization has grown at a multiple, and only recently its share price reached an all time high: truly outstanding.

My dad told me that the most important thing in a career was to be with a winning team, that the Yankee Bat Boys had more championship rings than Snyder or Mays had with the Dodgers or Giants. I have been very lucky to have my entire career with Bear Stearns.

Without Fordham Law, I would never have been at the SEC, or been involved with the drafting of Rule 144, nor would I have had the fortune to work with the most loyal and most intelligent people: my colleagues at Bear Stearns. Clearly, I would not be speaking before you this evening.

I wish to make a few observations which are the product of my being a lawyer, my experience as a regulator and years in the investment community. These remarks represent my personal views. I will repeat, my personal views.

I question the conduct of many outside counsel when they provide advice to their clients on business and tax related issues. I believe most corporate scandals involve three parties: Businessmen, Accountants and Lawyers. Corrupt executives are greedy and unethical, but a few are insane. Almost always they seek a cover, in the form of the support and encouragement of their accountants and lawyers. Without this support, I believe corporate crime would diminish substantially.

Our capitalist system has brought us the most potent economy ever. It rewards efficiency, encourages creativity, and fuels social mobility. No society has provided such opportunity for the masses to aspire to and achieve success in one generation. Our capitalist system is a meritocracy. It is the heart of our Democracy. Its Weakness is Greed.

Let us look at the corporate corruption in the 1990's. Who were the people involved? The most prominent names were identified with the corporate and accounting world. However, much of the fraudulent activity would not have occurred without the support of outside counsel and law firms through their use of comfort and opinion letters. These legal opinions are not rendered out of ignorance of the law. Too often,

they are provided to their clients because of greed and the fear of alienating an important client. These legal opinions are written in nuanced language to achieve a double purpose. The so called “should” opinions are drafted artfully to insulate the lawyer and his firm from culpability, while they encourage the client to engage in questionable activity. Corporations and accounting firms have gone bankrupt as a result of these questionable activities. Executives face criminal charges. All too often they have relied on the written opinion of their outside counsel. Many of WorldCom’s, Enron’s and Tyco’s questionable activities were approved in writing, by outside counsel.<sup>11</sup>

While there has been criticism of this conduct by lawyers, not enough has been done. Businessmen and accountants have sustained far greater punishment than have the lawyers on whose advice they relied. And so, the quality of lawyering must come into question. Law firms must be accountable for reckless lawyering. Greed must be discouraged by the legal community. After decades of relative lethargy, the entire world is today more highly charged than ever. Competition is more fierce and our survival is more threatened.

Today, America is engaged in what a friend of mine, Norman Podhoretz, the former editor of *Commentary* magazine, calls “World War IV” (he counts the Cold War).<sup>12</sup> America is leading this war against fundamentalist Islamic terror. America unquestionably has the strongest military, the most sophisticated technology and the most efficient capitalist system. No nation has ever enjoyed such superiority. Yet, the physical and emotional threat to the United States has never been as immediate and as direct. There is no doubt that Americans have courage. But we must remain focused and consistent in our commitment to fight terror. And we must reinvigorate our character to assure that we prevail.

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11. See e.g., Michael France, *Enron’s Lawyers Under Scrutiny: A new report casts a critical light on outside and inside counsel. Will Justice Dept. take note?*, BUS. WK. ONLINE, Nov. 27, 2003 (discussing the report of Enron’s bankruptcy examiner, Neal Batson); the full Batson Report (including Appendix C on the Role of Enron’s Attorneys) is available at <http://www.enron.com/corp/por/examinerfinal.html>; see also, The Lawyer’s Column, *A Profession Under a Cloud*, WASH. POST, Dec. 30, 2002, at E01.

12. See Norman Podhoretz, *World War IV: How it Started, What It Means and Why We have to Win*, COMMENT., Sept. 2004, available at <http://www.commentarymagazine.com/podhoretz.htm>.

Those who take advantage of our financial system, those who lie, cheat and are dishonest are cowards. They weaken our economy and drain America's strength during wartime. It is the responsibility of the legal community to reassert its authority and act decisively to address corporate greed.

None of us will ever forget 9/11. It is important that we remember each day since 9/11. We have remained secure. Who would have thought that real estate values would reach record levels, and that crime would be at an historic low. Our city thrives and tourism is at an all time high. This is no coincidence. It is the result of the professionalism and dedication of our local and national leaders.

No leader better exemplifies Courage, Commitment and Character than one of our guests. It is my privilege to introduce my dear friends and the finest police commissioner in New York City's history: Ray Kelly and his charming wife, Veronica.<sup>13</sup>

This evening has been a special honor for me and my family.

I thank you.

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13. Raymond W. Kelly was appointed Police Commissioner of the City of New York by Mayor Michael R. Bloomberg on January 1, 2002. He previously held the office from September 1, 1992 to January 9, 1994.

*Notes & Observations*