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Remarks Delivered on the Occasion of the Presentation of the Fordham-Stein Prize to the Honorable Milton Pollack on October 26, 1994

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REMARKS DELIVERED ON THE OCCASION OF THE PRESENTATION OF THE FORDHAM-STEIN PRIZE TO THE HONORABLE MILTON POLLACK ON OCTOBER 26, 1994

The Fordham-Stein Prize is a national prize to render public recognition to the positive contributions of the legal profession to American society. This prize honors individuals whose work exemplifies outstanding standards of professional conduct, promotes the advancement of justice and brings credit to the profession by emphasizing in the public mind the contributions of lawyers to our society and to our democratic system of government.

Remarks of John D. Feerick, Dean of Fordham University School of Law

Father O'Hare, Louis Stein, distinguished members of the bench and bar, and guests. Tonight we are assembled for the 19th awarding of the Fordham-Stein Prize. As I begin my remarks, I would like to acknowledge the debt and gratitude of our school to Mr. Stein for making this prize possible.

The Fordham-Stein Prize was endowed to recognize, and to emphasize in the public's mind, the contributions of lawyers to our society and to our democratic system. In keeping with this mandate, the Prize is presented to a member of the legal profession whose work exemplifies outstanding standards of professional conduct, promotes the advancement of justice, and brings credit to the legal profession.

To accomplish this, our Law School conducts a nationwide search each year, through a selection committee, and invites nominations and supporting statements from jurists, attorneys, bar leaders and citizens throughout the United States. Since its inception, the Prize has been awarded to four members of the United States Supreme Court,¹ three highly respected federal judges,² three individuals who have held the position of U.S. Secretary of State (in-

1. Warren E. Burger received the Prize in 1978, Potter Stewart in 1983, Lewis F. Powell, Jr. in 1987 and Sandra Day O'Connor in 1992.

2. Henry J. Friendly received the Prize in 1976, Edward Weinfeld in 1984 and William Hughes Mulligan in 1990.

cluding the current incumbent),³ an outstanding defense attorney,⁴ a distinguished prosecutor,⁵ and a lawyer who has committed her whole life to public service.⁶ This remarkable group of honorees reflects the highest qualities of leadership, commitment to the public, and integrity.

This year's recipient of the Fordham-Stein Prize, Judge Milton Pollack, continues this proud tradition. He has rendered outstanding service to the public over a career spanning more than 60 years at the bar, and has earned a reputation as one of America's great trial judges. He is especially well known as an exceptional contributor to the resolution of the most complex disputes, as fair and equitable in dispensing justice, and prodigious in his efforts in helping his colleagues. One of those who nominated Judge Pollack put it this way:

[Judge Pollack] is, quite simply, the best evidence I know of that our court system, so often the subject of criticism and so frequently the object of proposals to tinker with one or another of its features, can and does work to solve problems and do justice when administered by a wise, intelligent and firm judge.⁷

Judge Pollack was born in New York City, the son of immigrant parents from Eastern Europe. He attended Columbia College, and in his senior year entered into its Law School, graduating in 1929. Following his graduation, he entered private practice, and within two decades established himself as one of the country's most outstanding lawyers—becoming, in the words of *The New York Times*, "one of the top litigators of his time."⁸

Judge Pollack was appointed to the federal bench in 1967 by President Lyndon Johnson, following a career of nearly 40 years as a practicing attorney. He was then 61 years of age. Though beginning a second career at the time of life when most individuals are contemplating retirement age, Judge Pollack brought to the bench a boundless energy, a commanding intellect, and a passion for justice that has defined his life as a judge. One of his fellow judges

3. Archibald Cox received the Prize in 1980, Warren M. Christopher in 1981 and Cyrus Vance in 1993.

4. Edward Bennett Williams received the Prize in 1985.

5. Robert M. Morgenthau received the Prize in 1988.

6. Marian Wright Edelman received the Prize in 1989.

7. Letter from the Hon. Michael B. Mukasey, District Judge, S.D.N.Y., to John D. Feerick, Dean of Fordham University School of Law (July 13, 1994) (on file with the Publications Office at Fordham Law School).

8. Arnold H. Lubash, *At Retirement Age, Federal Judges Choose to Help Reduce Court's Caseload*, N.Y. TIMES, Apr. 5, 1987, at A48.

recently noted, “[i]n these times of crushing caseloads and spiraling litigation costs, which is often combined to delay, or, indeed, deny justice, Judge Pollack is widely recognized as universally acclaimed as a model of innovative, practical, and expeditious adjudication.”⁹

Chairman Arthur Levitt of the Securities and Exchange Commission has echoed this comment, stating:

[h]is mastery in the field of securities regulation is perhaps unique: he entered the practice of law at about the same time that [the SEC] was created, went on to become one of the country’s leading securities law practitioners, and since his appointment to the bench, has authored more than 150 decisions in the field.¹⁰

Judge Pollack’s extraordinary qualities and abilities are perhaps best illustrated by the global resolution he engineered of lawsuits against Michael Milken and Drexel Burnham Lambert, the crowning achievement of a long and distinguished career. In the wake of the law enforcement initiatives that led to their demise, Milken, Drexel and others were besieged by scores of private lawsuits brought on behalf of hundreds of thousands of investors seeking billions of dollars in damages. These disparate cases from a multitude of different jurisdictions were consolidated before Judge Pollack. Thanks to his mastery of the subject matter, his tenacity, his forcefulness and his fairness, all of them were resolved by way of settlement. I understand that there was a sense of incredulity among those involved that such an enormous volume of litigation involving so many different parties and so much money could be disposed of so efficiently and so swiftly by mutual agreement. Chairman Levitt added:

[t]he value of Judge Pollack’s successful efforts to resolve the *Drexel*¹¹ and *Milken*¹² litigation is incalculable. At the most basic level, the settlement means quick and certain compensation to claimants. Beyond that, the settlement has relieved the courts of what would surely have been years of extraordinarily

9. Letter from Loretta A. Preska, District Judge, S.D.N.Y., to John D. Feerick, Dean of Fordham University School of Law (Aug. 13, 1994) [hereinafter, Letter from Loretta A. Preska] (on file with the Publications Office at Fordham Law School).

10. Letter from Arthur Levitt, Chairman, Securities & Exchange Commission, to DeVitt Distinguished Service to Justice Award Committee (Dec. 29, 1993) [hereinafter, Letter from Arthur Levitt] (on file with the Publications Office at Fordham Law School).

11. *In re Michael Milken & Assoc. Sec. Litig., et al. MDL Docket No. 93-924* (S.D.N.Y. Stip. & Order, filed Sept. 29, 1993).

12. *Id.*

complex and costly litigation. Finally, for all those who decry the dismal state of our legal system, the settlement serves as an inspiring illustration of what can be accomplished when innovative procedural rules are applied in a creative, intelligent, and even-handed way.¹³

Beyond the courtroom, Judge Pollack has made extraordinary contributions in the field of court administration. These include being one of the volunteer judges who began the experimental program [in the early 1970s] that led the U.S. District Court for the Southern District to switch from the master-calendar system to the individual-assignment format. In addition, he headed the committee that revised the jury system in the Southern District, and led a panel that revised the civil, criminal, admiralty and general rules of the court.

In his career, Judge Pollack has served on many committees of the Judicial Conference of the United States, including the Committee on Trial Practice and Techniques (1968-70),¹⁴ the Salary Committee (1971-72),¹⁵ and the Committee on Court Administration (1971-87),¹⁶ of which he has chaired its Subcommittee on Supporting Personnel (1970-80)¹⁷ and its Subcommittee on Jury Alternatives for Complex Litigation (1982-84).¹⁸ He is also a member of the Federal Judicial Center's Board of Editors of the *Manual for Complex Litigation*. Additionally, he has served on numerous committees of the Southern District, including the Assignment Committee, and the Jury Committee of which he is presently Chair.

In 1983, Judge Pollack was appointed by Chief Justice Warren Burger as a member of the Judicial Conference Committee on Multi-District Litigation, a position he held up until last month, and longer than any other judge. Of this service, a colleague recently observed:

I had occasion to observe incognito, *i.e.*, from the back of the courtroom seated among lawyers and other observers, the Proceedings of the Judicial Panel on Multi-district Litigation. One of the questions presented to the Panel was whether the Korean Airlines disasters cases should be referred back to the transferee

13. See Letter from Arthur Levitt, *supra* note 10, at 2.

14. *Pollack Tough on Criminals, A Taskmaster in His Own Court*, N.Y.L.J. Jan. 7, 1985 p. 1, col. 3.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

judge in light of certain newly-discovered evidence A lawyer representing plaintiffs argued . . . the burden of that delay would fall heavily upon plaintiffs, many of whom, he continued, are survivors of the passengers who lost the primary breadwinner in the disaster and are now penniless. Defendant's counsel argued with some force that judicial economy required a single judge to assess the significance of the new evidence. Judge Pollack . . . questioned defendant's counsel to confirm counsel's agreement that under the Warsaw Convention at least \$75,000 was payable to the survivors of each person who perished in the disaster [and] whether he would agree as a condition of transfer that defendant immediately pay \$75,000 to the survivors of each passenger, postponing to another day the question of whether additional sums might also be payable. After an audible gulp, counsel agreed.

During the break in the proceedings, this exchange was the sole topic of conversation amongst the literally dozens of lawyers in the room. Lawyers who knew the case and lawyers who did not were heard to remark that Judge Pollack accomplished more for the just administration of these cases in five minutes than all other [judges] and lawyers who had been involved had accomplished over the years.

Closer to home, we in the Southern District observe the same scenario on a daily basis, not only in Judge Pollack's courtroom but as a result of his guidance He has, in his quarter century on the bench, consistently exemplified the highest standards of the profession. He is a role model for all of us and sets a standard to which all aspire but few achieve.¹⁹

Judge Pollack has played a formidable role in forming the careers of many lawyers who have practiced before him. Few, if any, forget the experience. Chief Judge Judith Kaye of the New York Court of Appeals, for example, recently noted the Judge's lasting influence in a letter to me:

[i]n my last life . . . I did a bit of litigation, sometimes in the federal court, where I encountered the good judge. I used to be short and carefree — but under his not-always-gentle tutelage I grew into full-fledged Trial Lawyer. Like so many other of us who endured similar experiences, I am delighted that he is receiving this wonderful honor, and proud that he is my friend.²⁰

19. Letter from Loretta Preska, *supra* note 9, at 1-2.

20. Letter from the Hon. Judith Kaye, Chief Judge, N.Y. Court of Appeals, to John D. Feerick, Dean of Fordham University School of Law (Oct. 11, 1994) (on file with the Publications Office at Fordham Law School).

We recognize tonight not only Judge Pollack, but all members of the federal judiciary known as the senior judges—senior both in age and years of service, but in no other category. Their contributions to the administration of justice day in and day out are truly monumental. Of Judge Pollack, one member of the New York bar has said that “he has saved the public centuries of litigation through his handling of the most difficult and complex dispute.”²¹ He is an heir to that tradition of great excellence personified by another member of the Southern District who was honored with this Prize ten years ago, Edward Weinfeld. Of Judge Weinfeld, we said then, “[h]e has taken the position of district judge, and through near-total dedication . . . has expanded it bringing to the position new respect and new depth and breadth of meaning.” In the career of Judge Pollack, we find a remarkable reflection of these same deeds.

In his closing remarks at the conclusion of the *Drexel Burnham*²² litigation, Judge Pollack generously praised all of the participants for the great efforts they had contributed to the case. He said, in part, “I owe each of you, the lawyers and your supporting staffs, an apology for the driving force under which you had to work. I congratulate each one of you for your participation in making this masterpiece become the reality it presents Were we situated to do so, we would hand out at the door of each of your offices a flag that would memorialize the effort and the occasion that bring you together at the finish line.”²³

As we gather here this evening, it seems that these gracious words form an appropriate metaphor for the career of our recipient. Every day of his professional life, Judge Milton Pollack has crossed the finish line [with] a standard of excellence that serves as a model for members of the bench and bar. In doing so, he has created a life in the law that merits our acclaim and the highest of recognitions.

It is a truly great privilege for me to present Fordham’s 1994 Louis Stein Prize to Judge Milton Pollack.

Response of the Honorable Milton Pollack

Mr. Stein, Father O’Hare, Dean Feerick, Michael Stanton, Father McMahan, Professor Daly, Ladies and Gentlemen:

21. *Id.* at 25-26.

22. *In re Michael Milken & Assoc. Sec. Litig. et al.*, MDL Docket No. 93-924 (S.D.N.Y. Stip. & Order, filed Sept. 29, 1993).

23. *Id.* at 25-26.

This is a most moving and overwhelming occasion for me. It is an extraordinary honor to be chosen as representative of the purposes of the award by a distinguished selection committee, and be named as the 1994 recipient of the Fordham-Stein Prize awarded by Fordham Law School.

Mr. Stein instituted this award to emphasize, in the public mind, individuals in the legal profession who promote the advancement of justice. The opportunity to serve the purposes of the award reside conspicuously with the District Judges throughout the country who serve in the vineyard of justice, and to whom is given the opportunity to foster the purposes of the award.

This is the second time since the Fordham-Stein Award was instituted that a District Judge has been chosen for the annual award; the other being ten years ago when Judge Edward Weinfeld was so honored. It is in the District Court, I suggest, where the perception of justice is significantly formed in the public mind, particularly the public's first-hand perceptions when they come to us either as litigants or jurors. It is in the District Court where, in the old advertising phrase, "the rubber meets the road."

There is no shortage in personal claims brought directly by the public to the District Courts. Nationwide in 1993, the District Courts serviced 33,933 prisoner civil rights cases;²⁴ 11,747 social security cases;²⁵ 10,536 ERISA cases;²⁶ and 27,655 non-prisoner civil rights matters which include discrimination law suits.²⁷ The Southern District of New York alone processed 2,105 *pro se* cases out of a total of 9,609 civil cases,²⁸ or about twenty-two percent of the civil caseload. I suspect the same proportions of such personal claims exist throughout the country. It is the District Court that meets each one of those personal claimants face to face, and attempts to resolve issues affecting those individuals' most personal concerns.

Another significant group seeks the benefits of Federal Court administration—the state law claims for which diversity of citizenship exists. Many spokespersons denigrate the effect of diversity jurisdiction, which the framers bestowed upon the Federal Courts.²⁹

24. UNITED STATES COURTS: SELECTED REPORTS, JUDICIAL BUSINESS OF THE UNITED STATES COURTS at AI-55 (1993) [hereinafter JUDICIAL BUSINESS].

25. *Id.* at AI-56.

26. *Id.*

27. *Id.* at AI-55.

28. 1993 Annual Report of the Court, Southern District of New York.

29. See, e.g., Rowe, *Abolishing Diversity Jurisdiction: Positive Side Effects and Potential for Further Reforms*, 92 HARV. L. REV. 963 (1979).

Because of that jurisdiction, we are confronted each year with thousands of purely state law claims, largely personal injury cases. Historically, this influx gained impetus from a ruling in a relatively minor accident case brought in the Southern District, and, until then, administered traditionally on Federal Law concepts. A mere two months after taking the bench, a District Judge tried a typical one of those state law negligence cases where the plaintiff in the District Court rested on a concept that the standard for liability was federal general law as determined by the Federal Court, since there was no state or local statute on which the negligence claim rested.³⁰ The Court of Appeals for the Second Circuit unanimously affirmed the judgment so determined.³¹ When the case reached the Supreme Court, the concept was unexpectedly reversed.³² It was decided by the Supreme Court in *Erie v. Tompkins*³³ that in diversity cases, Federal Judges were required to find and apply state law as interpreted by the state courts.³⁴ The effect of the new rule of law (which I am one of the few people in the room who recall being decided) was to create a strong inducement to file such claims in the Federal District Court, where possible, thus expanding and bloating district court calendars. Simply stated, diversity had conferred jurisdiction on the Federal Court, but state law concepts would nonetheless be the appropriate rule of decision to be applied. Filing of state law claims have since increased almost 10-fold.³⁵

In the vast sea of litigation which reaches the District Court, courtroom management becomes a delicate and challenging art. The control of the pre-trial development, and, ultimately, the trial courtroom in the service of reaching fair and just results, is a never ending task. Even where the litigants do not appear *pro se*, experience (or lack thereof) of the people's advocates sometimes increases the difficulty of the task. We are confronted by aspiring pilots who can fly piper cubs, but are not yet ready to fly large commercial planes or modern jet liners. Chief Justice Burger remarked in his speech at Fordham twenty-one years ago that "the painful fact is that the courtrooms of America all too often have piper cub advocates trying to handle the controls of Boeing 747

30. *Tompkins v. Erie R.R.*, 90 F.2d 603 (2d Cir. 1937).

31. *Id.*

32. *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938).

33. *Id.*

34. *Id.* at 79.

35. JUDICIAL BUSINESS, *supra* note 1, at AI-54. The total number of diversity cases nationwide in 1993 was 51,445. In 1941, this total was merely 7,348. *Id.*

litigation.”³⁶ It falls to the District Court to try to regulate those advocates; to endeavor to achieve the optimum in just results.

Considerations of sanctions to be imposed on lawyers or litigants where disciplines are not observed on the journey to a just result are not mere academic exercises to a District Judge. Decisions we have to make on sanctions applications can have enormous effect on the course of a party's participation in a case and, beyond that case, on the entire process of justice.

Were we in a more perfect world that had universally accepted the teachings of the notable Stein Center for Ethics and Public Interest Law, Judges might not be faced with lawyers who, it is argued, are intent upon the destruction of our justice system as we know it. But because the teachings of the Stein Center for Ethics have not yet been universally accepted, District Court Judges are required, for example, to balance a defendant's Sixth Amendment right to counsel of his or her choice against the interests of an orderly process and the appearance of propriety. In such challenges, it is the District Court Judge who must, by foresight—not by hindsight—balance with finality the interests of the justice system against the interest of a defendant like John Gotti, who says “Bruce Cutler is my lawyer and I want that lawyer.” It is the District Court Judge who must balance with finality societal interests against the personal desires of some of the defendants in a multiple-defendant criminal case. Take for example the case in which three of the fifteen defendants want the same lawyer to represent them—a lawyer of some community notoriety—even when unacceptable conflicts are apparent. In balancing those competing interests, the District Court affects not only the case on trial, but profoundly affects the public's and the individual's perceptions of justice.

For every case like the World Trade Center bombing case,³⁷ tried by judges like Fordham's own Kevin Thomas Duffy, the District Court tries hundreds of drug cases. It is said that the search and seizure issues raised in those cases are so much the same [to each other] as to merit little real attention. But those issues which are posed are very real to the particular defendant and that defendant's family and friends. And, when the District Court determines

36. Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REV. 227, 231-32 (1973).

37. *United States v. Khaled Mohammed El-Jassen*, 819 F. Supp. 1661 (E.D.N.Y. 1993).

that the evidence should be suppressed, there is no subsequent history; that ruling begins and ends the matter in the District Court and is a ruling that has real meaning to real people.

What is often forgotten, is that the District Court is not only the first court to touch a case, but is the only court to touch the vast majority of our cases. Only about 16.5% of the cases filed are ever appealed.³⁸ Thus, in the remaining 83.5%, the District Court is the only court the litigants ever see, but, even when it is the only court to deal with the case or a group of cases, the District Court can often have as much impact as the Supreme Court.

Some 57 years after *Erie v. Tompkins*, a different avalanche of cases, this time in the financial field, descended *en masse* on the Southern District of New York; the cases embraced almost 600 defendants consisting of individuals and entities.³⁹ The claims involved over 25 billion dollars and were based upon frightful allegations of predatory financial self-dealing.⁴⁰ Those massive cases were accompanied by predictions that they would not be resolved in your lifetimes, much less mine. Nevertheless, the deluge of those *Drexel*⁴¹ and *Milken*⁴² cases was substantially disposed of in the District Court within two years, yielding recoveries for the claimants of approximately three billion dollars.⁴³ Just as importantly, the cases were apparently disposed of to everyone's satisfaction, since all the parties affected signed an agreement, except for a handful of objectors whose appeals turned out to be unsuccessful.⁴⁴ The District Court took advantage of being the first and only court to deal with this spate of litigation. In so doing, the court took an active role in getting a cadre of superb dedicated counsel to work together, to promote, advance, and satisfy the concepts embodied in the Stein Award, and to eliminate at one fell swoop widespread

38. In 1993, 226,165 civil cases and 44,800 criminal cases were closed nationwide in the District Courts. JUDICIAL BUSINESS, *supra* note 1, at AI-48, AI-105. In addition, in that same year, 50,224 cases were filed nationwide in the Courts of Appeals. Of these 3,928 were appeals from administrative proceedings and 672 were original cases. Therefore, the number of cases appealed from the District Courts in 1993 was 45,624. JUDICIAL BUSINESS, *supra* note 1, at AI-3. This number is approximately 16.8% of all District Court cases closed in 1993.

39. *In re Milken & Assoc. Sec. Litig., et al.* MDL Docket No. 924 (Stip. & Order, filed Sept. 29, 1993).

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *See, e.g., Morse v. Milken*, 777 F. Supp. 312 (S.D.N.Y. 1991).

legal controversies which had the capacity to strangle the court system.

And so, I express my sincere thanks to those who have so generously appraised me and compassionately overlooked my shortcomings, and I express my gratitude for the award which bears the name of a prestigious law school and that of its outstanding and highly regarded alumnus, Mr. Louis Stein. I owe special thanks to Fordham; it sent me one of my superb, outstanding law clerks and started the rush to my chambers—Tom Kavalier. In thanking Mr. Stein and Fordham for the great honor you have conferred on me this evening, I leave you at my advanced age with the great words spoken by Mr. Justice Oliver Wendell Holmes on his 90th birthday when he said: “You have added gold to the sunset.” Thusly, I accept the award on my own behalf and on the behalf of the dedicated 579 active and 290 senior District Judges⁴⁵ who serve side-by-side in the promotion and advancement of the interest of justice.

Thank you for this wonderful occasion.

45. See JUDICIAL BUSINESS, *supra* note 1, at 35.

