

REMARKS OF JERRY HYMAN, BUSINESS LAW ADVISOR

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My remarks today are listed in the agenda as professional reflections. As I think back on my professional life, I would try to be mindful of a caveat once expressed by one of the founders of my firm who said that the things that you remember best probably never happened at all. In about 45 days I will mark the 61st anniversary of my admission to practice in New York. I graduated from Harvard Law School about a year and a half before. I spent a year as a clerk for a judge of the First Circuit and six months establishing my residency in New York, studying for the bar at the same time that I had started work for my firm. The law firm, which was then known as Cleary Gottlieb Friendly and Cox, was where I was to spend my entire professional life. As my first year in law school was coming to an end, World War II was also coming to an end in Europe. The government decided to recruit a few law students and business school students to work for a period for the Office of Military Government in occupied Germany. I applied and was accepted and took a leave from law school. I was stationed first in Frankfurt and then later in Berlin. My principle assignments were investigating an important German pharmaceutical company and Germany's largest electrical

manufacturing company. We were concerned principally with their contribution to the Nazi regime, including use of slave labor, their attempts to conceal assets, principally in Latin America, to prevent seizure as enemy property during the war. I still have vivid memories of the destruction of German cities that had resulted from the U.S. and British air bombardments and also in Berlin from the struggle with the Russian Army and the battle of Berlin. A visit to the Dachau Concentration Camp near Munich where there were still barrels of ashes of cremated inmates also remains vivid in my memory. A disconcerting aspect of my time there was the contrast between the fortitude of the Army officers dining facilities where we ate and the general near starvation of a good part of the German population. So one was torn, on the one hand, between the feeling that they had brought it upon themselves by supporting the Nazi regime and on the other hand by pity for their plight. When I returned to law school the war was over in the Pacific as well as in Europe. The law school was now operating around the year. It had changed from a year... from a fall and spring semester to three quarters, roughly four months each. To make up for the shorter periods, seven terms were now required for graduation instead of the usual six. Prior to leaving law school, because of the depleted membership of the Law Review during the war, I and a few other first year students had been asked to serve on the Law Review during the second semester based solely on our grade on the first semester exam. On my return to law school, I again became a Review editor, so I and a few others had a unique experience of working six terms

on the Review instead of the usual four. I had decided to practice in New York City. Many of my law school friends were there. I had no compelling reason to go elsewhere and it seemed the best place for someone who had no particular network to rely on. Cleary Gottlieb had been established about a year and a half earlier by four partners of a prominent law firm who had decided to leave and form their own firm largely out of dissatisfaction with the changes in the way their old firm operated, and by three lawyers who had served in the government during the war years. Cleary Gottlieb's founding partners were an extraordinary group. Four of them had been first in their law school class, including two who were reputed to have the highest grades at Harvard Law School since Louis Brandeis. Two were former Rhodes Scholars and there was an associate who was a Rhodes Scholar. Two of the founding partners were later to go on to distinguished public careers – Henry Friendly, the Judge in the 1st and 2nd Circuit, and George Ball was Undersecretary of State and later as an Ambassador to United Nations. When I was looking for a job, the most prominent New York firms could be identified by the ethnic nature of the majority of a large part of their lawyers. There were the white shoe firms, Protestant. There were the largely Irish firms and the largely Jewish firms. Cleary Gottlieb was one of the few Wall Street firms that was rather mixed. One of the nameless partners was Irish Catholic, two were Jews, one was a Protestant. The three younger partners were all Protestant. The firm was relatively small. When I joined there were 7 partners. I was the 20th associate. It had two offices, one in Wall Street, a

smaller one in Washington. I decided I did not want to work in a large firm. At that time the large firms were 80 lawyers or so, I think, 90 was about the largest in New York. That seemed much too large to me, kind of like a factory. Today my firm has over 1,000 lawyers. We still have only two offices in the United States. We have ten in various cities in Europe and Asia. So I'm acutely aware of the changes in the practice that time can bring. A further attraction to my firm was that it was not departmentalized. Most of the lawyers practiced in various areas, although, of course, some had specialties and were more concentrated. But particularly for younger lawyers, one could and did experience a wide variety of areas. One of the partners kept a charge on which he noted for each associate the type of work that that associate had done. His theory was that every associate should have experienced a wide variety of work. So I did all kinds of corporate work, securities work, court litigations, administrative litigation, agency litigation. I worked for trade associations. I advised on price and wage controls. I like to think that I was a country lawyer, if you can be that on Wall Street. In those days office hours included a half day on Saturday as well as the usual five days. Of course, there was no Xerox, no internet, no Blackberries, no cell phones and there was no air conditioning. It was a great technological advance when some years later we switched from manual typewriters to the new IBM electric typewriters. The firm operated largely by consensus. Lawyers were given a great deal of autonomy, partnership compensation was determined and still is on a tier lock step

system based on seniority, not on a so-called merit system or eat what you kill. Decisions at the partnership level were made not by one or two partners, but by the firm as a whole. When I became a partner, the firm was still small enough that we decided on most bills in billing sessions of all the partners and we made such decisions in partnership meetings about salaries for associates and administrative staff. Those days are gone. When I reflect on my professional life, I'm grateful that I've been blessed with having learned from mentors not only in law school, but from my seniors at Cleary Gottlieb. The approach is different. Most of them each have their own individual style, but the common element was the emphasis on excellence and dedication to the interests of their clients. But they did not let that dedication to their client tend to override their higher obligations. One of our clients, a well known corporation, against all advice, decided to adopt an executive compensation plan that was excessive and unfair to stockholders. We resigned the account. Similarly, when we were preparing the SEC registration statement for another client and the client resisted including disclosures that we thought were material, we withdrew from the representation. That was fortunate since the SEC later started an investigation of that offering. One also learned from lawyers that one met in the course of negotiations or litigation with other firms. I still think with kindness of one lawyer who was representing a corporation whose assets were being foreclosed on under a channel mortgage that I had drafted as a very young and inexperienced lawyer. After we finished the transaction, he

took me aside and privately suggested to me that I could have facilitated the transaction if I had drafted the channel mortgage slightly differently. I don't remember that man's name, but I still think of him a lot. An even more vivid example of the type of professional relations among members of the Bar that we should all aspire to occurred as the result of the 9/11 World Trade Center disaster. Our office is directly across the street from the World Trade Center. There was some contamination and minor damage to our building, but fortunately it survived, although television reports during the day kept saying it had collapsed or was about to collapse. Fortunately, it did not. But we were evacuated and no one was allowed in the area. We were gone for about three months. The problem was whether we could resume our practice. That was solved by dividing ourselves into about seven or eight different units. We were able to find offices in that way. The most gratifying aspect of it was that two large prominent New York law firms with whom we compete for business for new lawyers offered us space. One firm went so far as to move some of its lawyers off a floor that it had recently expanded to in order to make room for us. It was an extraordinary example of generosity and solidarity for which we were and continue to be grateful. I also learned from clients a great deal and there are many cases that offer long and continuing relationships with them. The client that I had the longest continuing relationship with was Pan Am World Airways. By chance, this was the first assignment I had when I started to work and I continued working for them during my career. Unfortunately, as many of you know,

they came to a sad end after an unsuccessful attempt to organize and reorganize in bankruptcy. Pan Am was not only the inventor of international air transportation, it was the father of jet passenger aircraft. It was the force behind the creation of the 747. It was the most well known international brand second only to Coca Cola. Pan Am was not without some responsibility for its problems. It could be arrogant, which irritated people. There was a saying that there were three ways to do things. There was the right way, the wrong way and the Pan Am way. Its death was a result largely of poor governmental policy, including mistakes in schedules and routes, failure on the part of Washington to recognize that the development of aircraft that could fly long range had changed the whole competitive situation, but also mistakes in judgment by Pan Am and some plain bad luck, including the tragic Lockerby bombing. That resulted in overwhelming diversion of first class traffic from Pan Am to foreign airlines. It was the final blow. Pan Am as a symbol of American power was felt by many to be much more likely than other airlines to be a target for terrorist attempts. My representation of Pan Am was an important part of my professional life. It also had some fun aspects. I had an opportunity to meet Charles Lindbergh, who was a consultant to Pan Am. Any time I took a Pan Am flight I could take pride in the fact that we had done the legal work for the acquisition of their 747 fleet and their Air Plus fleet, their Lockheed fleet and other aircraft. I'd also, for a period, served as Senior Vice President and General Counsel of Pan Am, splitting my time between Pan Am and other clients. Among the

places that my Pan Am work took me to was Iran, where I went several times to negotiate a potential financing with representatives of the Shah. This, of course, was before the revolution. I recall one meeting in a steamy, hot, un-air conditioned conference room where we, the Pan Am team, and the representatives of the Shah all suffered through the meeting wearing our coats and ties. We thought it would be impolite of us to remove them when the host did not. We later learned that they thought it would be impolite for them to remove theirs when their guests did not. So we all suffered. On another meeting at the end of the negotiation one day, the principle lawyer for the Shah's group turned to me and said, "Is there anything else that I should be asking for?" I do not remember what I said at that point. But a unique experience that resulted from my Pan Am representation was a flight from London to New York with my wife and me as the sole passengers on a fully crewed 747. Because of a problem with a piece of navigation equipment that had developed after leaving Moscow, under Federal Aviation Rules the plane could no longer carry revenue passengers. Its passengers were, therefore, put off the plane and loaded on to the London/New York flight that my wife and I were booked on. Since I was an officer of Pan Am at that time, we were traveling on a pass, so in accordance with company policy we were displaced by the revenue passengers. The crew of the disabled 747, however, were going to fly the airplane home. The Captain offered to take us with him since we were company personnel and, therefore, could legally fly. We thought about it and decided if the crew thought it was

safe enough, it should be safe enough for us, so we accepted the offer. And needless to say, the champagne was plentiful and the service was exceptional. I considered it part of my obligation as a lawyer, as any lawyer should, to be involved in matters outside of my practice. I early on became a member of the Association of the Bar of the City of New York and served on various committees, eventually becoming Chairman of the Committee on Corporation Law. Early on I resisted joining the ABA, despite the urging of one of my seniors who was very active and at one time had been New York's candidate to be President. I refused because of the ABA's then policy of refusing membership to lawyers of color. Having been born and growing up in the Mississippi Delta, which is obviously a segregated community, I had witnessed too often the injustices of racial segregation. Later when the ABA completely reversed its policy, I did become a member. I was involved in other organization, the PLI which John mentioned, the American Law Institute, the Lawyers Committee for Civil Rights Under the Law and I was involved with political and civic organizations in New York and with the affairs of my college and law school. I retired from active practice when I reached 70 in accordance with my firm's policy. When I was honored to be asked to become Business Advisor to this Section, I gladly accepted. I've kept in mind some words of Oliver Wendell Holmes on his 90th birthday which I'd like to read to you. "The leaders in a race do not stop short when they reach the goal. There's a little finishing cantor before coming to a standstill. There's time to hear the kind voice of friends and to say to oneself

the work is done. But just as one says that, the answer comes. The race is over, but the work never is done while the power to work remains. The cantor that brings you to a standstill need not be only coming to rest. It cannot be while you still live for to live is to function. That is all there is in living." Thank you.