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Remarks on the Occasion of the Thirtieth Anniversary of the Pace Law Review

Stephen J. Friedman*

It is a special pleasure for me to participate in celebrating the Thirtieth Anniversary of the Pace Law Review. It is special because I think that law reviews occupy a unique place in American legal education, and those who earn the right to become members are truly privileged.

I would like to begin with some personal thoughts about what service on the law review meant to me and what I hope it means to all of you—both current members and alumni. When I was at law school, membership on our law review was determined solely by grades—so I was spared the rigors of a writing competition. After my first year, my father, who was a single practitioner in New York, had helped me get what he thought was a wonderful summer job for a lawyer-to-be. I worked for a title guaranty company. Was I searching titles and making nice legal judgments about who really owned Blackacre? Not on your life.

My job involved taking paper index cards recording judgment liens in Manhattan and putting them in a card file in numerical order. My boss was an eagle-eyed woman who was deeply suspicious of my ability to put things in numerical order. She was constantly peering over my shoulder on the hot, non-air conditioned balcony where we worked. It was truly horrible, and I couldn't understand why I hadn't had any first-year courses about putting things in numerical order. I even began to wonder why my Dad appeared to enjoy law practice so much.

Then, out of the blue, the phone rang one evening and I learned that I had been elected to the Law Review. I also learned that I would have to leave my wonderful job and go back to law school early to work on the first issue. I was overjoyed, especially about escaping the challenges of putting things in numerical order.

* Stephen J. Friedman is President of Pace University and was formerly Dean of Pace Law School. These remarks were originally delivered as the Keynote Address at Pace Law Review's 30th Anniversary Celebration.

I went back to law school a few weeks early and found that my law school experience had been totally transformed. Filled with the still mystifying experience of my first year, I found myself reviewing submissions from law professors all over the United States. I discovered that I had unprecedented access to a faculty that had seemed pretty remote during my first year. I also found myself working on a short article—we called them case notes—that was actually going to be published! All of this for a fellow who—truth to tell—was not great at putting index cards in numerical order.

In short, I felt special—special in the extra depth and multiple dimensions that the law review had added to my law school experience, and special in the extra burdens that I was carrying. That is the way that I hope that all of you feel—as students and as alumni of Pace Law School and of the Pace Law Review.

It is the best kind of special, because it is earned, not given. Earned in the competition that brought you to the law review, earned in the extra thought and effort you give to your work, earned in the extra hours you put in, and earned in your willingness to go the distance to get an issue out. That is a recipe for success in law school, and it is a recipe for success in a career in the law and more generally in life.

The law review is an incubator for growing the complex skill-set that goes into the making of a successful lawyer. Much of what you learn in law school is an elaboration of the special mode of thinking known as legal analysis—what law professors like to call learning to think like a lawyer. It is without doubt an essential element of being an effective lawyer. But success requires a lot more.

Equally essential are a series of personal and professional skills that are the hallmarks of a fine lawyer: the ability to communicate skillfully and effectively, orally and in writing; to have the focus and self-discipline to examine every aspect of a legal issue, to turn over every factual rock and to identify the DNA of what you find under each one of them; and the capacity to control the anxiety that comes when you don't see how you can possibly get it all done, or how you can solve the problem that your client has posed.

In addition to the self-discipline, commitment and skills that law review experience imparts, there are some special experiences that come only to students who labor in the vineyards of a journal. A quite remarkable thing about law reviews is that they are student-run and student edited—and the best legal scholars in the world want to publish in them. How extraordinary to be in a position, as a student, to choose among articles written by leading legal scholars—faculty at Pace Law

School and elsewhere—and to edit them.

The law review work also provides a perspective on the role of the law that is not found in most law practices. Law, as I was fond of saying when I was the Dean of Pace Law School, is an important part of the operating system for our society. It is one of the most important sets of rules that makes the social network function. They are rules to which most people don't pay explicit attention most of the time. Yet to a very great degree they shape the way we interact with each other and with the state. What lawyers spend most of their time doing—documenting transactions and relationships and litigating disputes—represents the margins of the legal system as a mechanism of social control. For the most part we all follow the rules because they reflect a basic social consensus.

Looking at the law from that perspective is a luxury not found in most law practices. Advising and representing clients and working to obtain the best possible result for them requires quite a different set of intellectual and emotional muscles from looking at law as a basic system of the social structure. That view of the law, however, is exactly what a lot of law review work is all about—and it provides a special opportunity for law students to look at the law from a broader perspective.

Is there too much elitism in what I have been saying? Is it fair that one group of students should have these special experiences, albeit at some personal cost, that may not be open to the others? There is some elitism to be sure—but it is of the best kind. Not an elitism of birth or background, but of effectiveness. It is the meritocratic elitism found in law practice.

Why are alumni of law reviews so well represented in the upper echelons of law firms, the federal judiciary and important government legal offices? It is because the same combination of intelligence, self-discipline, hard work and collateral skills that brought them to the law review also brought them to leadership positions in the legal profession.

As always, privilege carries with it special responsibilities. Every leadership role raises the question of “leadership for what?” That is a question each of us must answer for ourselves every day as our careers evolve. Where am I leading my firm, my government agency, or my client? What is the right balance between organizing my practice to make money and organizing it to serve my clients and the legal system in the best possible way? Please note—I am not just referring to the importance of pro bono legal work. This is much more fundamental. The way that the leaders of the bar conduct themselves and guide their firms defines the role of the legal profession in American life and

ultimately determines the way it is regarded by the broader society.

I have little doubt that the legal profession, like so much else in our society, has gone off the rails in recent decades—and done so largely in the pursuit of making more money clothed in the robes of client service.

There was a legendary Director of Enforcement at the SEC named Stanley Sporkin—he was later a Federal District Judge. When SEC investigations found serious failures in corporate disclosure to the securities markets or serious legal and ethical failures by American business, he would often ask “where were the lawyers?” A horrified legal profession would answer “we were serving our clients single-mindedly, which is our job—and it is wrong of the SEC to try to turn private lawyers into cops, or regulators of their clients.” But Stanley Sporkin’s cry “where were the lawyers?” speaks of a second, equally deep obligation of lawyers not to be blind to the consequences of what they are doing.

Who is right in this debate? I think both sides are right, and that is what makes these issues so difficult. A lawyer simply cannot do his job if the client thinks her lawyer is not acting in her best interests. At the same time, are lawyers free to continue aiding their clients in an activity the lawyer believes may cross the line of legality? Is it enough to have “an argument” that it is not illegal? The most basic federal securities fraud rules require that an explicit intent to defraud be proved. If a lawyer tells a client that he has a good argument, is that enough to eliminate the required intent? If it is enough, what responsibility does the lawyer assume when he or she advises that there is “a good argument” to support what the client wants to do?

I do not minimize the difficulty of reconciling these dual responsibilities of the lawyer to clients and to the legal system. But because it is difficult does not mean that it can be avoided. Lawyers who fail to find the right balance are at risk of being co-opted into their clients’ wrong-doing—and being held responsible.

There is no magic answer to finding the right balance between these responsibilities. It requires having a clear vision of the lawyer’s role in the justice system and of whether your obligations to your client go beyond giving him or her your best judgment and the benefit of your technical skills—it is truly a matter of shaping the role of the lawyer in America.