

For Immediate Release

REMARKS OF CORPORATION COUNSEL MICHAEL A. CARDOZO ON THE FUTURE OF THE LEGAL PROFESSION

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Introduction

Good afternoon. Thank you for that most generous and kind introduction. I guess you had to play with the facts as you did in order to justify your otherwise questionable selection of me to speak at your Distinguished Practitioners series.

Seriously, I am honored to be here. Being the speaker at such an important lecture series requires an address on a significant subject. The subject that is particularly important to me, and I hope to you, is the future of the legal profession. How should the profession address the growing problem of graduates burdened with huge debt, increasing numbers of unemployed lawyers, too many of whom are not trained to address the legal problems of the day, and the expanding need for legal assistance, particularly by both government and the poor?

I want to discuss these issues from the perspective of someone who has spent most of his professional life in private practice and the last nine years as a government lawyer. My theme, drawing on my experience, is that the economic climate of the last few years has created a unique opportunity for law students in particular and for society in general, while at the same time presenting enormous challenges to both law schools and the profession as a whole.

I see the present as offering the potential, if the opportunity is not squandered, of growth and development for the legal profession, especially for junior lawyers. I am particularly excited to discuss this here today, because I know that at Hofstra public service is emphasized and valued.

In fact, 29 Hofstra alums are presently working at the New York City Corporation Counsel's Office, and one of your 2009 graduates was just named one of our Rookies of the Year! And so I think you are an audience that is ahead of the curve and hopefully more prepared to hear and understand what I have to say than most.

Personal Journey

Let me begin by telling you a little about myself, how I came to be Corporation Counsel of the City of New

York, and what I have learned along the way.

Approximately 45 years ago, after my graduation from law school and a one-year clerkship with a federal judge, I joined what was then one of the larger law firms in New York City – a firm of with a grand total of about 60 lawyers. The mentoring experience of a clerkship (essentially a one-year tutorial), and then working at the firm with senior lawyers where I was given very substantial responsibility, was an unparalleled learning experience.

I enjoyed virtually every minute of my life as a young associate. I took depositions, wrote briefs, and argued and even tried major cases. For example, my law firm represented what was then a small basketball league known as the National Basketball Association. Another associate at the firm, a classmate of mine named David Stern, and I were given the task, along with a senior partner, of defending the League in a major antitrust class action. Stern and I, not the senior partner, took depositions across the country and argued major motions in court. Stern, by the way, went on to become distinguished himself, although as Commissioner of the NBA, not as a lawyer. The legal training David and I received handling that case, and scores of others, was unparalleled.

I doubt very much that my experience as a young lawyer could be replicated today. The growth of law firms, the economic challenges they face, and the nature of law firm practice would make such an experience virtually impossible.

The senior partners at the law firm not only taught me to be a lawyer, they gave meaning to something I had learned in law school that I hope is still taught today, the importance of public service. As the New York Rules of Professional Conduct remind us,¹ being a lawyer is not only about what the legal situation is in our society is, but it is also about what it *should* be — we are supposed to work with and for our communities in an effort to promote justice.

One quick story to illustrate this point. When I was a young associate, a senior lawyer in another firm, Cyrus Vance, who went on to become U.S. Secretary of State, asked me to serve as counsel to a judicial reform task force that he was chairing. On that Task Force were two young lawyers, one an assistant professor from Columbia and the other a lawyer who had a small practice in Brooklyn. As counsel to that Task Force, I spent substantial time working with, and getting to know, Vance and these two young lawyers, whose names were Ruth Bader Ginsburg and Mario Cuomo. I honestly believe that if I had not accepted appointment as counsel to the Task Force, I would not be Corporation Counsel today.

While I was in private practice I participated in other public service activities, including serving for two years as President of the New York City Bar Association in the late 1990s. These experiences gave me a sense that while private practice offers numerous benefits, there were very interesting and rewarding opportunities in the public sector as well. So in late 2001, shortly after 9/11, when then Mayor-Elect Michael Bloomberg, whom I had not previously known, asked me to serve as New York City Corporation Counsel, I jumped at the opportunity.

I have never regretted that decision.

Why is my job so rewarding?

First, government lawyers, as I learned for the first time after I became one, are just as good, if not better, as those in private practice. And second, while service in the government will not make you rich economically, it offers unparalleled satisfaction in terms of the results you can achieve. It is truly as a government lawyer that you can make a difference in this world.

To give just a taste of what I mean, let me highlight a few of the things the 650 lawyers in the Corporation Counsel's Office have done during my tenure. They drafted the landmark legislation that eliminated smoking in all public places in New York City, legislation that has literally been copied by cities around the

¹ NEW YORK RULES OF PROFESSIONAL CONDUCT, RULE 6.1, *available at* <http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/NYRulesofProfessionalConduct4109.pdf>

world. They also drafted the legislation giving the Mayor control of the New York City school system and have participated in the countless number of law suits stemming from that legislation

They have helped to implement the Mayor's environmental initiatives, including winning a \$104 million verdict against Exxon for allowing oil to seep into wells in Queens. They have brought groundbreaking lawsuits to prevent both illegal handguns and untaxed cigarettes from coming into New York City. They helped negotiate the settlement of the 10,600 World Trade Center cases brought against the City and others by workers claiming to be injured by the air at Ground Zero, a case, incidentally, in which your former Dean, Aaron Twerski, has played an important role as a special master.

They have negotiated, and handled the resulting litigation from, numerous economic development projects including Yankee Stadium, Citifield, Brooklyn Bridge Park and the redevelopment of the World Trade Center site.

And in the last nine years, lawyers in the Office of the Corporation Counsel have argued five separate cases in the United States Supreme Court, an indication of the significance of the legal issues dealt with by government lawyers even if you don't work for the United States Solicitor General's Office. I had the privilege of arguing one of those cases myself.

I could go on and on, but I hope you get the point; a government lawyer has enormous opportunities to improve society, and realizes tremendous satisfaction in doing so.

There is one other lesson I learned as Corporation Counsel, which is directly relevant to my theme today. Serving as a government lawyer gives you the training, experience and responsibility that unfortunately private firms can no longer offer on a comparable scale to a junior lawyer. When you work as a lawyer in government, you take depositions, argue motions and even try cases very early in your career. Perhaps the best evidence of this is that we are able to attract volunteer lawyers from the private sector to work for the Corporation Counsel's office, some for a year as deferred associates, others for four months to try cases, and many for a few days to take depositions. These young lawyers come to us on a pro bono basis in part because a government law office offers them the experience and responsibility that, given the nature of today's private practice, the private law firm cannot provide. You learn quickly how to do things—and do them well—when you work for the government.

The Profession

As I hope I have illustrated, the legal profession has been changing over time, sometimes for the better, other times for the worse.

To go back to the *really* old days, even before I first practiced law, many would-be lawyers did not go to law school at all—they read the law and studied and worked under experienced attorneys in order to gain the skills necessary to enter the profession. In fact, a distant cousin of mine some of you may have heard of, Benjamin Nathan Cardozo, never graduated from law school, yet somehow managed to have a fairly successful legal career.

Later, as law school became virtually the only method of entering the profession in the U.S., law schools taught students legal theory far more than practical skills. To learn how to actually practice law, newly accredited attorneys in effect served first in something akin to an apprenticeship. They learned on the job. After they became lawyers, people often practiced in small law firms or had solo practices. There were fewer large law firms—certainly not the mega firms of 500 or more attorneys that exist today—and overall far fewer jobs having a Wall Street oriented practice.

As a result, young lawyers received substantial experience early in their careers. Whether through an apprenticeship or working in a small practice, they were given significant responsibility. Like me, they were trusted to take depositions, had the chance to learn by working closely with partners, and were given the opportunity to argue important cases.

Over time, the number of law schools, and the number of lawyers, skyrocketed.² In fact, the number of law schools in this country have increased more than a third since I graduated more than four decades ago.

While the profession has continued to evolve private practice is obviously where most young lawyers begin their careers. By the year 2000 almost 83% of lawyers under the age of 40 were in private practice.³ But the law firms of recent years, both large and small, are very different from what they used to be.

Globalization, together with the resulting increased size of major firms, and the technological advancements of the past decades, have made competition in the legal market increase exponentially. Of the approximately 44,000 law school graduates in this country in 2009,⁴ compared to just under 30,000 in 1976,⁵ I am confident in saying that few of them can look forward to the kind of one-on-one training, high level of responsibility and public service encouragement that I was lucky enough to have had when I was a young attorney at a law firm.

Instead, new hires are often given discrete tasks and are placed on large teams, giving them little insight into the overall impact of what they are working on and thus providing on the job training in a much more limited way. Billable hour requirements at firms keep rising, increasing 9% since 2004,⁶ and the pressure to just get the job done and move on to the next assignment is immense, to the substantial detriment of potential volunteer opportunities. As a result, the message of giving, and getting, the most from public service efforts has become substantially diluted. In short, the broad legal training and experience young attorneys used to receive, together with involvement in outside activities – which enabled them to grow into accomplished lawyers in their own right – is becoming a relic of the past. And at least partially as a result of this job dissatisfaction among young attorneys has sky rocketed.⁷

In sum: more lawyers, fewer jobs, substantial job dissatisfaction, yet greater expectations from employers and clients of knowledge and experience. Fewer and fewer clients willing to be charged by the infamous billable hour, and even fewer willing to pay for the time and training of recent law school graduates. Clearly lawyers must learn new skills and find new ways to obtain the training and experience they need to succeed.

What This Means for Law Schools

The changes I have just outlined must be understood and addressed by the greater legal community. A renewed focus on practical legal training early on in a lawyer's career is critical. Law schools must carefully examine how they are preparing students for the profession they are about to enter. And this involves more than educating them about theory and teaching them to "think like a lawyer." Law schools must give their students the practical skills they need to actually do their jobs.

² ABA, ENROLLMENT AND DEGREES AWARDED (1963-2008), available at <http://www.abanet.org/legaied/statistics/charts/stats%20-%201.pdf>; ABA, NATIONAL LAWYER POPULATION BY STATE (2009), available at [available at http://new.abanet.org/marketresearch/PublicDocuments/2009_NATL_LAWYER_by_State.pdf](http://new.abanet.org/marketresearch/PublicDocuments/2009_NATL_LAWYER_by_State.pdf).

³ Clara N. Carson, *The Lawyer Statistical Report, The U.S. Legal Profession in 2000*, American Bar Association, available at http://new.abanet.org/marketresearch/PublicDocuments/lawyer_statistical_report_2000.pdf.

⁴ NALP, CLASS OF 2009 NATIONAL SUMMARY REPORT (2009), available at <http://www.nalp.org/uploads/NatlSummaryChartClassof09.pdf>.

⁵ ABA, ENROLLMENT AND DEGREES AWARDED (1963-2008), *supra* note 4.

⁶ NALP, A LOOK AT ASSOCIATE HOURS AND AT LAW FIRM PRO BONO PROGRAMS (2010), available at <http://www.nalp.org/july2009hoursandprobono>.

⁷ See generally JEAN STEFANIC AND RICHARD DELGADO, *HOW LAWYERS LOSE THEIR WAY: A PROFESSION FAILS ITS CREATIVE MINDS* (Duke University Press, 2009); Olivia Collings, *Dissatisfaction rife in large law: survey*, (Sep. 11, 2009), available at <http://www.thenewlawyer.com.au/article/Dissatisfaction-rife-in-large-law-survey/497978.aspx>; as well as various blogs such as Above the Law, available at <http://abovethelaw.com/> and Rose Colored Glasses, available at <http://rosecoloredglassesjd.blogspot.com/>.

Over the years, however, the law schools' teaching mission has dominated over the goal of how to put that teaching to practical use. Unlike most other professional schools, law schools do not focus on training professionals, but rather on developing exceptional students of the law. As a report by The Carnegie Foundation recently found, this educational approach leads to law graduates being "more like competitive scholars than attorneys engaged with the problems of clients."⁸ I submit that now is the time for this to change—for legal educators to focus on *fully* preparing their students for their legal careers.

Of course, not all schools are guilty of this, and many have already started to change their curricula in response to the gradual decrease in experience and on-the-job training young attorneys receive when they begin practice. Hofstra sets a praiseworthy example.

As you all know, clinical programs like the ones here provide invaluable exposure to the real world for law students. You have the opportunity to work with real clients, in a real legal setting, with real consequences. In combination with instruction provided by clinical directors and professors, this resembles the one-on-one training and hands on experience I received when I was starting my legal career.

However, many law schools still do not make this practical training component a high priority, and are thus depriving their students of the opportunity to fully compete for jobs with graduates from more forward-thinking schools. Rigidly sticking to the traditional advocacy model of teaching, which over-focuses on individual learning and is not in-tune with the realities of the profession, is a disservice to students. As experts have long noted, this model is no longer "broad enough to deal with the varied roles that lawyers must fill in the New Economy."⁹

What This Means for Law Students and Law Graduates

Law students have increasingly expressed dissatisfaction with the current law school curriculum. Many feel the third year can be a near-waste—few if any required courses and a lack of interesting and useful seminars can make the last year feel like a mere excuse to plunge law students further into debt, which today reaches \$120,000 for almost one third of law school graduates.¹⁰

Meanwhile, there are many individuals and groups in need of legal assistance, especially in this economy. Much of the help they need does not require someone with a J.D., they would benefit greatly from the advice of law students.

Law school upperclassmen, many of whom are restless and bored, could actually be doing something useful for both themselves and their communities. By their third year, law students have two years of legal education and likely two summers of legal or semi-legal employment behind them. They have the skills and the time and desire to put what they have learned to use.

Rather than taking a somewhat random assortment of courses, students could be developing and honing practical skills through experiential learning. The lack of a coherent, practical curriculum for the third year of law school, and sometimes even for the second year, is a huge waste of opportunity for the students, for the profession and for society.

As far as post-employment opportunities are concerned, the combination of the lack of readily-available private sector jobs upon graduation with the growing need for legal services in the public sector, offers another challenge—and another opportunity ... Law school graduates can work for the government, for organizations providing legal services for the poor, or other non-profit entities and receive invaluable

⁸ WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW, SUMMARY 6 (2007).

⁹ ROBERT W. CULLEN, THE LEADING LAWYER: A GUIDE TO PRACTICING LAW AND LEADERSHIP 3 (2009).

¹⁰ Debra Cassens Weiss, *Almost 1/3 of Law Students Expect to Graduate with \$120K Debt*, ABA Journal (Jan. 6, 2010), available at http://www.abajournal.com/news/article/almost_1_3_of_law_students_expect_to_graduate_with_120k_in_debt/.

training and experience, together with exposure to a wide array of interesting legal issues that the private sector can no longer offer junior attorneys. And they will do all of this while benefiting their communities.

Certainly there is a need for this legal help. The recession has affected everybody, and the need for lawyers' skills in particular for government and for the poor has been on the rise. The government has expanded its efforts in many areas in recent years, and there is a growing need for lawyers in areas like security, immigration, white-collar crime, and bankruptcy.

Today the need for lawyers' services is all the more urgent, and although the quantity of jobs is still very limited by funding constraints, some parts of government seem to be reacting to the public's growing need for legal services. For example, New York State Chief Judge Jonathan Lippman recently released the judiciary's budget request for this year, which includes \$25 million in new funding for civil legal services for the poor.¹¹

At the same time, the economy has forced many recent graduates to change their plans and go into the public sector. This is not a detour on the graduate's career path, but rather an exciting potential new path or a stepping stone to where he or she wants to be later on in life. Taking a job with the government or with a legal services organization will help you see what else is out there, perhaps preparing you to develop a whole new niche for yourselves. You will certainly gain the opportunity to improve your lawyering skills. In addition, as I said at the beginning of this talk, working in the public sector allows you to really make a difference – in cleaning up the environment, in protecting public safety, in defending an immigrant threatened with deportation or a parent in a custody dispute.

The experience you get while working with these clients, the contacts you make while calling someone on their behalf, and the satisfaction you derive from winning or losing their cases will make you better people, more capable lawyers, and more attractive job applicants.

What This Means for the Legal Profession

So at this point, we have determined that there are major problems in the structure of the legal profession: huge numbers of law graduates, many saddled with mountains of debt, fewer job opportunities in the private sector, inadequate training for those relatively few graduates who are hired and discontent among many junior lawyers who are lucky enough to have found a job. But we have also seen that there is a growing need for lawyers in the public sector, where, given the chance, young attorneys will find unparalleled opportunities for career development and job satisfaction.

If the leaders of the legal profession were here today – for example United States Attorney General Eric Holder, New York State Attorney General Eric Schneiderman, the president of the American Bar Association, and the chairs of the large law firms—what would you tell them should be done to solve this dilemma? What *really* needs to happen, in order for things to change? Because at this point, we have a situation where young, bright lawyers are doing anything from babysitting to hiding from creditors' calls as they drown in debt,¹² while the country is full of people who are in desperate need of the legal assistance these lawyers could provide.

Part of the answer of course is money. A recent study found that law school debt prevented 66% of its respondents from considering public service jobs;¹³ the plain fact is that because of a lack of money,

¹¹ New York State Unified Court System, *Court Leaders Submit Reduced Operating Budget for Fiscal Year 2011-2012*, Dec. 1, 2010, Press Releases, available at http://www.courts.state.ny.us/press/pr2010_16.shtml.

¹² *Id.*

¹³ ABA COMMISSION ON LOAN REPAYMENT AND FORGIVENESS, *LIFTING THE BURDEN: LAW SCHOOL DEBT AS A BARRIER TO PUBLIC SERVICE* 9, (2003), available at <http://www.abanet.org/legalservices/sclaid/lrap/downloads/lrapfinalreport.pdf>.

public service and government employers have had a very difficult time employing and retaining law school graduates in the face of an increasing need for legal services.¹⁴

But expecting the government to write a massive check to solve the problem is not only completely unrealistic, but is not the right solution in any event. Rather, the legal profession must address this problem directly. The private bar in particular must recognize it has both an obligation, and a self interest, to devise a solution whereby law graduates enter public service right out of law school, thereby helping to fulfill the need for legal services for government and the poor, and giving law graduates the public sector experience that will make them far better lawyers when they enter private practice.

The bar has an obligation—a very real obligation—to solve this dilemma because of its unique role in society. Lawyers enjoy a virtually unregulated monopoly on who may practice law. They set the standards on who may enter the profession and who must leave it, and they have the right to refuse, unlike anyone else in society, to divulge what others have told them in confidence. But with this status comes a responsibility—to help those unable to help themselves, and, more broadly speaking, to improve society. This is why the New York Rules of Professional Conduct say that “[l]awyers are strongly encouraged to provide pro bono legal services to benefit poor persons.”¹⁵

When you couple this obligation with the undeniable fact that today we have an increased number of graduating law students without private sector opportunities, and with those graduates having an increased need for training and experience, the response the profession should make seems obvious. It must help to devise a way for more lawyers to take on work for the government and the poor.

It is in the bar’s self interest to devise a solution to the problem I have outlined, because when the law graduate who goes into the public sector later joins a private firm, that lawyer will have the skills and training the private bar no longer supplies. And the lawyer who joins the firm with this public sector experience will be ready to take on the responsibility of dealing with major matters and avoid the boredom that leads to the discontent of so many junior lawyers today.

Employers in the private sector can no longer afford to simply hire the brightest, the best test takers, or the graduates of certain law schools. They must focus more on the qualities clients are demanding from their lawyers: communication skills, giving and receiving constructive feedback, focusing on the positive rather than only the negative—a general level of social intelligence that we lawyers have not always been famous for having. Clients do not want to hear why they cannot do what they want, they want to hear what they must change in order to achieve their goals. Lawyers have traditionally had a hard time with this, since law school and the first few years of work typically trains us to be critical and to look for potential problems. However, as clients’ needs change and competition among lawyers increases, those employers who adapt their hiring practices to address client needs will be the ones to succeed.

Conclusion

The void in our legal education and training that I have outlined must be filled—beginning with a change in law school curricula and a shift in the expected and desired career paths of young attorneys. The profession must help young lawyers to work in the public sector, where they will have the opportunity to truly blossom as legal professionals, will enjoy the rewards that public service offers, develop skills and qualities critical to their success in this new economy and provide services that are desperately needed in our society. I can only say that, in many ways, graduates cannot afford not to do this.

I hope that what I have said has provided a different, and more encouraging, perspective on what the current climate means for law students about to enter this profession. Those students are presented with an enormous challenge upon graduation, but also with the opportunity to work with people, and in

¹⁴ *Id.* at 10.

¹⁵ ABA, NEW YORK RULES OF PROFESSIONAL CONDUCT, RULE 6.1, *available at* <http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/NYRulesofProfessionalConduct4109.pdf> (encouraging lawyers to provide pro bono legal services to the poor).

situations, that they did not expect. Charles Darwin once said that “in the long history of humankind those who learned to collaborate and improvise most effectively have prevailed.” I have no doubt today’s graduates will do just that.

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