



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Speeches

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**THE LEGAL PROFESSION TODAY:
HOW TO IMPROVE THE TRAINING OF JUNIOR LAWYERS,
AND SUPPORT GOVERNMENT AND LEGAL SERVICES OFFICES**

**ADDRESS OF CORPORATION COUNSEL MICHAEL A. CARDOZO¹
TO THE FEDERAL BAR COUNCIL
IN ACCEPTING THE EMORY BUCKNER AWARD**

WALDORF ASTORIA HOTEL, NEW YORK, NOV. 23, 2011

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Introduction

Thank you [to] Frank [Wohl, President of the Federal Bar Council] for those very kind remarks. I really am overwhelmed.

When Frank called me a few months ago to tell me I had been selected for this honor I was, frankly, speechless. I have been coming to this annual lunch virtually every year since I began practicing law in 1967. I have watched this award being presented to true giants of the government and the Bar, to people like [former] Senator [Daniel Patrick] Moynihan and [former] Chief Judge [of the New York State Court of Appeals Charles D.] Breitel. I have seen the honor bestowed upon mentors of mine, such as [former Secretary of State] Cyrus Vance [Sr.], judges before whom I appeared, like [former] Judge [Zachary] Carter and [former New York State Court of Appeals] Chief Judge [Judith] Kaye, and people with whom I have had the privilege of working, such as [former] Governor Mario Cuomo. To be put in the company of such outstanding men and women, at least for the next 15 minutes, is truly humbling. ...

Before I begin, I want to acknowledge a few very special people without whose support I would not be standing here today. First, [New York City] Mayor [Michael R.] Bloomberg, who appointed me to what I honestly believe to be the greatest legal job in America and who consistently demonstrates by, for

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example, his unwavering support of the Law Department and me, as well as his deep and abiding commitment to the rule of law.

Second, the individuals who truly deserve this award are the outstanding but unheralded attorneys in my Office, who work so hard, and for so little pay, for the benefit of this great City. After 35 years in private practice, and 10 in the public sector, I am convinced that these lawyers are the very best; they are just as skilled, just as creative and just as dedicated as any attorneys in any firm in New York. Ten of those lawyers are sitting at the table over there and deserve to be recognized as representatives of the entire New York City Law Department for all that they do.

Third, and most importantly, I want to thank my wonderful family, especially my wife Nancy, who is sitting at the table just in front of me. Without her devoted love and support throughout our more-than 46 years of marriage, especially during the last 10 years when I have too often been distracted by what seemed to me to be a New York City legal crisis, I wouldn't be here today.

My speech today, uncharacteristically for me, was prepared a number of weeks ago. So I can assure you that what I am about to say was not suggested by an article in Sunday's *New York Times* on a somewhat related topic.

Without sounding too somber on this festive occasion, I want to discuss an issue of pressing importance to all of us: the current and future state of the legal profession. I will point to some troubling developments, particularly the lack of opportunity for junior lawyers to gain hands-on litigation training and responsibility, and, perhaps as a consequence, the increased numbers of unsatisfied and unhappy lawyers. However, so that we all leave for Thanksgiving on a positive note, I will expand on *The Times'* identification of one part of the problem and offer a few suggestions as to how these problems might be addressed.

Public Service

Let me start with the importance and rewards of public service, which has always been one of the hallmarks of the legal profession, especially in this City.

My service as Corporation Counsel has brought home to me the rewards of public service. On one level, I can recall the special pride I felt when I had the honor to argue before the U.S. Supreme Court and announce that I represented New York City. More tangibly, Corporation Counsel lawyers frequently perform legal services that make this City a better place and realize enormous satisfaction for themselves in the process. To cite just a few examples, assistant corporation counsels helped save hundreds of thousands of lives by drafting the legislation that banned cigarette smoking in all public areas in the City; City lawyers also helped turn ambitious development proposals into realities for generations of New Yorkers when they handled the complex transactional work for the High Line, the development of the far West Side and the redevelopment of the World Trade Center site. On the litigation side, Corporation Counsel lawyers helped make this City a safer place by successfully suing out-of-state gun dealers who illegally allowed their guns to be brought to New York to kill innocent New Yorkers, and many assistant corporation counsels have helped save the City millions of dollars through their vigorous defense of the more than 8,000 damage suits brought against the City every year. This year, one group has won 20 verdicts in a row in federal civil rights, also known as 1983 trials.

As [former New York City] Mayor [Ed] Koch, another Buckner awardee, has said, "Public service is the noblest of professions if it's done honorably, if it's done right. ..."²

² "Former Mayor Ed Koch Hails Public Service Careers in NYU Wagner Discussion," NYU Wagner (Oct. 15, 2010), <http://wagner.nyu.edu/news/newsStory.php?id=678>.

It is critical that we lawyers continue to carry out this public service tradition that the Emory Buckner medal honors.

Problems in the Profession

This brings me to some troubling recent developments. Consider the following facts:

- First, the number of unemployed lawyers in this country is very high, and likely to increase, with New York having the largest number of surplus attorneys in the country.³ And according to one report, only two-thirds of 2010 law school graduates nationwide have been able to obtain legal employment.⁴
- Second, at the same time that lawyer unemployment numbers are increasing, the demand for civil legal services for the poor is skyrocketing. Last year, for example, more than 2.3 million New Yorkers tried to navigate the legal system without an attorney, forced to represent themselves in evictions, foreclosures, deportations and scores of other civil matters.⁵
- Third, because of budget cutbacks, government law offices, including mine, have fewer and fewer lawyers although our caseloads keep rising.⁶
- Fourth, the opportunity for junior lawyers in the private sector, especially those in large firms, to gain hands-on training and experience is limited and steadily declining. This is partially a result, as both the *Wall Street Journal* and *New York Times* have recently reported, of clients' increasing unwillingness to pay for junior associates to staff their matters.⁷ ... and ...
- Fifth, according to the annual *American Lawyer* survey, satisfaction levels among mid-level associates are decreasing.⁸

Perhaps because of some of these facts, the public's respect for the profession continues to decline. Surveys indicate that only 11 percent of Americans have "a great deal of confidence" in law firms.⁹ This negative impression has undoubtedly been reinforced by recent press coverage of the

³ Patrick G. Lee, "New York Has Largest Glut of (Unemployed) Lawyers in the Nation," *The Wall Street Journal Law Blog* (June 28, 2011, 3:08 p.m.) <http://blogs.wsj.com/law/2011/06/28/new-york-has-largest-glut-of-unemployed-lawyers-in-the-nation/>.

⁴ Editorial, "Addressing the Justice Gap," *The New York Times* (Aug. 23, 2011), <http://www.nytimes.com/2011/08/24/opinion/addressing-the-justice-gap.html>.

⁵ Mirela Iverac, "For More and More Low-Income New Yorkers, Civil Legal Services Are Just Out of Reach," *WNYC Radio* (Sept. 30, 2011), <http://www.wnyc.org/articles/wnyc-news/2011/sep/30/civil-legal-services/>.

⁶ Greg Bluestein, "State Budget Cuts Clog Criminal Justice System," *Seattle Post-Intelligencer* (Oct. 26, 2011, 8:15 a.m.), <http://www.seattlepi.com/news/article/State-budget-cuts-clog-criminal-justice-system-2237070.php>.

⁷ Ashby Jones, "What's A First-Year Lawyer Worth?," *The Wall Street Journal* (Oct. 17, 2011), at B1; David Segal, "What They Don't Teach Law Students: Lawyering," *The New York Times* (Nov. 19, 2011), <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?src=me&ref=general>.

⁸ "The Associates Survey," *The American Lawyer* (Sept. 1, 2011), <http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202512392833&slreturn=1>.

⁹ "Confidence in Congress and Supreme Court Drops to Lowest Level in Many Years," *Harris Interactive* (May 18, 2011),

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problems confronting lawyers and law schools, including accounts of law schools misrepresenting their applicants' LSAT [law school admission test] scores and their graduates' employment statistics and Sunday's *New York Times* article [from Nov. 20, 2011] arguing that law schools don't teach law students how to practice law.¹⁰ In fact, the Senate is reported to be considering holding hearings on various aspects of legal education in this country.¹¹ Finally, a recent *New York Times* op-ed echoed the current lack of regard for the legal profession and legal training by arguing that the monopoly on legal advice and services enjoyed by the profession should be ended and non-lawyers allowed to perform legal services.¹²

What We Can Do to Solve the Problem

These problems cannot be dismissed simply as consequences of the recession. So with some trepidation, given the assembled intellect and experience in this room, I would like to offer a few recommendations on how to deal with some of the issues I just identified, particularly those relating to training, responsibility and job satisfaction.

I begin with a review of the way in which [former U.S. Attorney for the Southern District, famed prosecutor, Wall Street legal expert and namesake of the Federal Bar Council award] Emory Buckner trained junior attorneys. [Former U.S. Supreme Court] Justice John Marshall Harlan, who himself was trained by Buckner, wrote in an introduction to a Buckner biography:

- "Buckner's method for indoctrinating young lawyers ... was to place real responsibility upon them at the earliest stage and to hold them strictly accountable for their performance."¹³ The biography itself recites that Buckner's policy "would be to delegate to the young men in his firm ... as much responsibility as he thought they could possibly manage. ..."¹⁴

Today, unfortunately, junior lawyers in private firms are infrequently given the type of real case responsibility exemplified by Buckner's method.

My experience as Corporation Counsel confirms the benefits of this "sink-or-swim" approach, accompanied by careful supervision of the young lawyer. At my Office, and I am sure most other government law offices as well, junior lawyers are given hands-on experience immediately. Shortly after law school graduation, those lawyers can be found taking depositions, arguing motions, assisting at trial and even arguing appeals. The result, as a recent survey of assistant corporation counsels confirmed, is

<http://www.harrisinteractive.com/NewsRoom/HarrisPolls/tabid/447/ctl/ReadCustom%20Default/mid/1508/ArticleId/780/Default.aspx>.

¹⁰ David Segal, "What They Don't Teach Law Students: Lawyering," *The New York Times* (Nov. 19, 2011), <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?src=me&ref=general>. See also David Segal, "Is Law School A Losing Game?," *The New York Times* (Jan. 8, 2011), http://www.nytimes.com/2011/01/09/business/09law.html?_r=1; Tierney Plumb, "What Will Come of Illinois' False LSAT and GPA Reporting?," *The National Jurist* (Oct. 10, 2011, 1:49 p.m.), <http://www.nationaljurist.com/content/what-will-come-illinois-false-lsat-and-gpa-reporting>.

¹¹ Ashby Jones, "Lawmakers Probe Data From Law Schools," *Wall Street Journal* (Nov. 14, 2011), at A5.

¹² Clifford Winston, Op-Ed, "Are Law Schools and Bar Exams Necessary?," *The New York Times* (Oct. 24, 2011), http://www.nytimes.com/2011/10/25/opinion/are-law-schools-and-bar-exams-necessary.html?_r=2.

¹³ Mayer, *Emory Buckner: A Biography* (1968).

¹⁴ *Id.* at 22.

that 84 percent of them are “highly satisfied” with their opportunity to work independently and assume responsibility and leadership.

At least with respect to litigation, this public sector model suggests that the training and job satisfaction problems faced by the private bar today could be addressed, at least in part, through creative collaborations by law firms and law schools with the public sector. For example, thanks to the generosity of many of the firms represented in this room, the Corporation Counsel’s Office has partnered with firms to provide valuable experience to private firm lawyers and needed “people power” to us. As a result of these partnerships, over 500 depositions conducted or defended by my Office over the last 12 months were handled by attorneys from the private bar working for us without charge. In addition, some private firm attorneys have been *seconded* to us, again without charge, to try City tort cases for four to six months.

Recent law school graduates have had similar opportunities. The deferred associates who worked for us last year at no cost to the City and the recently graduated unemployed lawyers working for us for free today (some of whom receive very modest stipends from their law schools) have gained an impressive range of experience in the less-than-12 months that they work for us, including trying cases and arguing appeals.

The benefits of these programs to a government office are obvious: at a time of severe budget restraints we had valuable resources available without charge that enabled us to effectively litigate our cases. The benefits to these lawyers are also self-evident: they not only gained case responsibility and valuable training in how to practice law, but also realized a level of job satisfaction that may otherwise have been lacking. And the law firms ultimately employing those lawyers now have better trained and more experienced attorneys working for them.

The arrangements I just described have the potential to provide training opportunities for junior attorneys that are significantly lacking today. While each government and Legal Aid-type office is different, I believe these types of arrangements, with a few modifications, could be adopted by many such offices. Such partnerships would also help meet the widespread need for lawyers in grossly underfunded government and legal service organizations.

This model might also be expanded upon by law schools, which are increasingly being asked to fill the role historically performed by law firms of training new lawyers. If recently graduated government lawyers in the Corporation Counsel’s Office are gaining this valuable hands-on training, why can’t the same opportunities be offered to third-year law students through an effective partnership by schools with government and legal service organizations, in a manner far beyond the clinical programs that exist today? Such arrangements would allow law schools to help meet the criticism that they fail to train law students in how to practice law. In one positive development, some government law offices are already partnering with law schools to create extern programs where students work for the government for a limited number of hours each week. But I believe much more can still be done.

My suggestions are certainly not the panacea to all the challenges faced by the profession today. Among the many additional steps that must be taken is the commencement of a frank dialogue among all parts of the bar – law schools, bar associations, the courts, the private bar, government law offices and civil legal services organizations – with each other. The potential solutions to the problems vary and might include making major changes in the law school curriculum that would result in more skills training or expecting firms to encourage their first-year associates to work at a lower salary, but at the firm’s expense, in a government or legal services office or even requiring employment in civil legal services or government law offices as a prerequisite to obtaining a law license. Any of these solutions, along with what are undoubtedly numerous others, would involve a dialogue and collaboration among all parts of the profession.

Conclusion

Throughout history, lawyers have played a crucial part in the progress of our country, and certainly our role is just as significant today. We must remember, however, that as lawyers we enjoy a monopoly in the regulation of our profession. With that monopoly comes a responsibility to exercise our power wisely and well, not only for the benefit of the profession, but for society as a whole.

Today we are faced with a glut of unemployed lawyers, a lack of training opportunities for many lawyers, and a large number of unhappy members of our profession. At the same time, the huge demand for lawyers for the poor and for the government remains unmet. We must work together to solve these problems.

To receive the Emory Buckner Medal from the Federal Bar Council is a wonderful honor. I thank you for it and wish you all a Happy Thanksgiving.

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