



NEW YORK CITY LAW DEPARTMENT  
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Speeches

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*For Immediate Release*

**CORPORATION COUNSEL MICHAEL A. CARDOZO'S REMARKS  
AT THE LAW DEPARTMENT'S BI-ANNUAL ALUMNI DINNER**

**"CORPORATION COUNSEL AWARD FOR DISTINGUISHED SERVICE"  
PRESENTED TO VICTOR KOVNER**

***HELD AT TWENTY FOUR FIFTH, NEW YORK, OCTOBER 11, 2012***

**Contact: Kate O'Brien Ahlers, Communications Director, (212) 788-0400, [kahlers@law.nyc.gov](mailto:kahlers@law.nyc.gov)**

**Introduction**

Welcome. I want to assure you that this evening will be far more exciting than some baseball game going on in the Bronx, and I say that even though I am a rabid Yankee fan. And it also promises to be far more interesting than some discussion that I understand begins at 9 p.m. between two people named Joe Biden and Paul Ryan. Let me add that I do appreciate all of you coming despite the competing events.

And a particular welcome to Victor Kovner, our honoree, and the recipient of the Corporation Counsel Award for Distinguished Service, and to his wife Sarah. I will say a few words about Victor a little later on after we finish our main course, when I present our award to him. Right now though, I would like to recognize four of the former award winners who honor us with their presence here tonight. I would like to recognize them: Milt Mollen, the very first recipient of this award, Evan Davis, Paul Crotty, and Joe Bruno.

I want to take this opportunity to bring you up to date on some of the happenings at the Law Department.

**Some Interesting Cases**

Let me start by going back about a year ago to the Occupy Wall Street demonstrations, during which we advised the Mayor, Commissioner Ray Kelly and others what was and was not permissible with respect to controlling demonstrators, and the limits that could be placed on their occupancy in the public/private space known as Zuccotti Park. Our legal work included the need to submit papers, on just a few hours notice, and under the glare of world-wide press coverage, to vacate a TRO that had been entered against the City in the middle of the night, an application on which we prevailed.

Among the other interesting matters we have been handling in recent years are those generated by Department of Education actions. I want to mention one case in particular that began when many alumni worked in the Law Department. It relates to the legality of the Department of Education policy of not allowing church groups to hold worship services in schools on Sundays. The case, which has been pending for 16 years, is scheduled for oral argument in the Second Circuit next month, marking the fifth time the case will be argued in that Court.

In the non-litigation arena, our Economic Development Division has been kept very, very busy by the City's numerous development projects including The High Line, the new Barclays Center in Brooklyn, Cornell's development of the Applied Science Campus on Roosevelt Island, and applied science facilities being built by Columbia and NYU with some City assistance. Since litigation seems to accompany virtually any City development project, we have, in addition to initiating various eminent domain proceedings, been called upon to defend environmental and other challenges to many of those initiatives, including presently on-going suits challenging the Willets Point development.

Among our pending cases are our on-going battles with the taxi industry. A state law passed early this year authorized the City to sell 2,000 additional yellow taxicab medallions, which is expected to generate over \$1 billion in much needed revenue for the City. A condition in that law provided for the City to license up to 6,000 livery cabs in each of the next three years with the holders of those licenses being allowed to accept hails from the street in the outer boroughs.

But those plans were brought to a halt when a State Supreme Court Justice ruled that the statute was unconstitutional on the grounds first, that it had not been preceded by a home rule message from the City Council, and second, that the livery hail part of the law was an unconstitutional special provision illegally favoring present holders of livery licenses. Given the urgent need both for the \$1 billion in additional revenues and the need for outer borough taxi service, we are seeking to take a direct appeal of this ruling to the New York Court of Appeals, bypassing the Appellate Division.

Monday's *New York Times* highlighted two of our other high-profile litigations. One relates to the legality of the Police Department's stop and frisk policies in NYCHA facilities and certain private buildings, as well as an overall general challenge to the City's stop and frisk policies. In addition to a preliminary injunction hearing involving the legality of stop and frisk policies in private buildings scheduled for later this month, in the spring a trial is scheduled in a wide-ranging class action challenge to stop and frisk.

Monday's *Times* also featured a front page article about the discrimination suit involving the FDNY and Eastern District Judge Nicholas Garaufis various rulings that Fire Department entrance exams have had a disparate impact on minorities. Because the Judge has determined, on summary judgment, that the giving of what he found to be discriminatory entrance examinations to constitute intentional discrimination, he has appointed a Monitor to oversee all aspects of Fire Department hiring, recruitment, candidate processing and related issues *for the next ten years*. That's right; a ten year monitorship. Argument in the Second Circuit on this monitor appointment occurred this spring, and we are anxiously awaiting the result. The one good piece of news in this case is that the Judge recently approved the use of a new fire department test, allowing the Fire Department to move forward to admit a new class of firefighters for the first time in four years.

I could spend the entire night talking about our other cases, but let me close by reciting a few statistics relating to our efforts to reduce the City's payouts, numbers that may offer some interesting comparisons to when each of you was an Assistant Corporation Counsel. Last year (Fiscal Year 2012) City payouts – for torts, HHC, police cases, etc. -- totaled \$506 million. Thirty years ago that number was only one-fifth of that amount, or \$105 million. We may be significantly slowing this growth down. Eleven years ago, in 2001, City payouts totaled \$567 million compared to \$506 million last year, meaning there has been an 11-percent decrease in payouts over the last 11 years. Related to this is the fact that last year our Special Federal Litigation Division, taking a far more aggressive approach to trying cases than in the past, thanks to the infusion of additional lawyers, tried 22 cases to verdict and prevailed before the jury in all

but one case. In sum, the 189 lawyers in the Tort Division, and the 99 lawyers in the Special Federal Litigation Division, are really doing phenomenal jobs, as are the attorneys in all our other divisions.

I hope that my recitation of these cases reminds you of the exciting matters you worked on while you were here. And, particularly for those of you who are retired, if you want to come back – pro bono – to try cases, take depositions or help train young lawyers we would love to have you. Just see me at the end of dinner. And speaking of pro bono, if any of you are interested in participating in the many pro bono projects in which some of our lawyers volunteer, let me know that as well.

## **Our Staffing**

To handle all of our work requires lots and lots of lawyers. Given the City's budget problems we frankly don't have enough attorneys on board to deal with our volume. One development that has enabled us to keep up with our workload involves our use of so-called post graduate fellows. Both last year and this year we had about 32 just-graduated law students working for us for 12 months, without pay, some of whom receive modest stipends from their law schools. Their presence in the Department has supplied us with additional person power to handle entry-level work, and at the same time has given these new lawyers valuable experience, which many have been able to successfully point to as they seek employment with others on a permanent basis.

At the same time we have continued and expanded our Public Service Program, where associates from the private bar spend time in our Office trying cases and taking or defending depositions. I know many of you have encouraged your firms to participate in this Program and for that I want to thank you. Last year more than 800 depositions were taken or defended by our Public Service attorneys, and I frankly don't know what we would do without them. We would love to have even more participants and for those of you whose firms are not yet participating, and would be interested in doing so, please let me know. The Program is clearly a win for us since it gives us more lawyers to try cases and take depositions. And I believe it is also a win for the participating lawyers and their law firms, since these lawyers gain valuable experience that would not otherwise be available to them.

## **Corporation Counsel Clerkship**

Finally, I want to make one very important point relating to personnel. You may recall that last year I announced the creation of a Corporation Counsel clerkship, modeled after a judicial clerkship, where a just graduated law student would work for us for one year in a clerkship capacity, working in various divisions, being introduced to City government, and gaining a valuable insight into how local government operates. In the spring we selected Candice Cho, who was about to graduate from Columbia Law School near the very top of her class, as the first Corporation Counsel clerk. Candice was selected from over 400 applicants – 400 – and I am pleased to tell you that so far the clerkship is working just as we anticipated.

We hope to continue this initiative into the future. But, here I need your help. This clerkship is privately funded and without voluntary contributions we cannot continue it next year. Last year about six or seven law firms very generously offered their financial support to fund this clerkship. To fund the clerkship for next year I hope that many of you will be able to step forward to help us. I will be sending each of you a letter in December asking you to make a tax deductible donation to support the clerkship, and I very much hope that many of you will generously respond.

## Victor Kovner's Award

And now to the main event, the awarding of the Corporation Counsel Award for Distinguished Service to Victor Kovner.

First let me recognize Victor's wife Sarah, who is seated next to Victor at the table over there. Sarah's many civic accomplishments, including serving as Deputy Director of the New York State Clinton-Gore Campaign, her service in the Clinton Administration and her efforts on behalf of women's rights, deserve a special award as well. But tonight we are here to honor her husband, a very good friend to many of us, including me.

*[Reads excerpts of a letter from Mayor David N. Dinkins regarding Mr. Kovner's service.]*

Victor's career, both before and after his service as Corporation Counsel, is a shining example of what separates the special lawyer from the average one. The special lawyer, like Victor, is someone who not only has great legal abilities, but who recognizes that he or she should also act for the public good, both inside government and while in private practice.

Victor's many high profile litigations in the private sector have earned him a well deserved reputation as one of the country's leading first amendment and media lawyers. Time prevents me from chronicling those cases here.

Candor compels me to add, however, that there is one area in which Victor's litigation efforts have occasionally failed, namely in suing New York City. Victor has only a 50-50 record in suits against the City and in amicus briefs filed adverse to the City. I am sure that the fact that one of the cases he lost was decided by one of his successors as Corporation Counsel who now sits on the Southern District had nothing to do with the decision on the merits. Victor, you can't win them all.

Our honoree is far more than just a First Amendment lawyer. His heavy involvement in civic activities, particularly in Jewish affairs, Democratic politics, and court reform efforts, deserve special mention.

I want to particularly emphasize Victor's lifelong efforts to improving New York's judicial system.

It was in the court reform area that I first met Victor almost 40 years ago, and it was that project, and the relationship we formed working on it, that I can honestly say played a major role in my becoming Corporation Counsel. Let me explain why I say this. In 1974, then Governor-elect Hugh Carey formed a Task Force on Court Reform, whose mission was to improve the New York courts. The Task Force was chaired by Cyrus Vance, the father of our present district attorney. I served as counsel to that Task Force and thus got to know the youngest member of the Task Force, an attorney named Victor Kovner. The Task Force's work, in which Victor played an important role, culminated in the Constitutional amendment that provided for merit selection of judges of the New York Court of Appeals, rather than the century old system of electing those judges.

Victor's devotion to improving the New York courts did not end with that Task Force effort. In the years since he has been a member of the Mayor's Advisory Committee on the Judiciary, chaired both the New York State Commission on Judicial Conduct, the City Bar Association's Judiciary Committee, and most recently the Fund for Modern Courts. And it was in that latter role that he played a key role in persuading the Legislature to pass, and Governor Paterson to sign, legislation that separated judicial pay from that of legislators, and created a salary commission that would have the authority to set judicial the pay. The result of this effort was enactment of a long-delayed increase in judicial compensation and the establishment of a procedure that will hopefully continue to separate judicial pay from legislative pay.

And in the course of all these court reform efforts, about 10 years and 10 months ago to be exact, at a meeting of the Fund for Modern Courts, Victor encouraged a then private firm attorney to try to persuade

Mayor-elect Michael Bloomberg to appoint that private firm lawyer as Corporation Counsel. Thank you Victor, for that advice; I have never regretted following it.

Victor, it is my great pleasure to award you the Corporation Counsel Award for Distinguished Service.

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