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OFFICE OF THE CORPORATION COUNSEL

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Speeches

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JUDICIAL EFFICIENCY IN TIMES OF ECONOMIC CRISIS: AN OPPORTUNITY TOO IMPORTANT TO WASTE

REMARKS OF NEW YORK CITY CORPORATION COUNSEL MICHAEL A. CARDOZO UPON ACCEPTING THE CYRUS VANCE TRIBUTE AWARD FROM THE FUND FOR MODERN COURTS AT THE YALE CLUB, NEW YORK CITY, ON DECEMBER 4, 2009

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Introduction

It is very humbling to receive an award that has previously been given to so many distinguished New Yorkers, including Judge Kaye, Chief Judge Lippman and District Attorney Hynes, who honor me with their presence here this morning. And to be given an award named in memory of Cyrus Vance is truly special to me. Next to my wife Nancy, who is sitting at the front table, without whose support for more than 44 years I could not have accomplished what I have done in my professional life, there are two particular people, of the many who have helped me in my career, who are responsible for my having had the privilege of serving as Corporation Counsel. One of those of course is Mayor Bloomberg, a previous Vance awardee himself. The other is Cyrus Vance. I cannot tell you how grateful I am to receive an award named in his memory, particularly from the Fund for Modern Courts – an organization to which Cy first introduced me, and a group that he, and later I, chaired.

I want to begin my remarks this morning by acknowledging a truly remarkable group of individuals whose outstanding performance is responsible for my accomplishments as Corporation Counsel; the members of the New York City Law Department a few of whom are sitting at the table over there. They are exemplars of Mayor Koch's adage that "public service, done honestly and well, is the noblest of all professions."

It is the continued opportunity to work with these dedicated individuals, who include some of the finest lawyers with whom I have ever been associated, together with the many challenges faced by my Office in these difficult economic times, that persuaded me to accept Mayor Bloomberg's invitation that I remain as Corporation Counsel for his third term.

History

To put in context what I am going to say this morning, I want to begin with a bit of history. In 1974, then Governor-elect Hugh Carey appointed what he called a Task Force on Court Reform and appointed Cyrus Vance as its Chair. Cy in turn appointed me as counsel to the Task Force and thereby started me on my journey into public service and court reform. (I should note parenthetically that among the members of that Task Force were three other attorneys who subsequently achieved relatively modest

success.) One Task Force member was a young attorney named Victor Kovner, another was then Columbia Law School Assistant Professor Ruth Bader Ginsberg, and a third was a lawyer then practicing in a small firm in Brooklyn whose name was Mario Cuomo.

That Task Force was asked to recommend solutions to the difficult challenges faced by the New York judicial system at the time. The Task Force ultimately recommended, and the Legislature and then the people subsequently adopted, three constitutional amendments – Vote Yes on amendments 1, 2 and 3 the Committee on Modern Courts' bumper stickers urged – creating a merit appointment system for the court of appeals, a commission on judicial conduct, and a centralized administrative system for the courts.

The Challenges Today

Today the judicial system faces different and frankly far more daunting challenges than those presented in the mid-1970s. In fact, as Chief Justice Margaret Marshall of the Massachusetts Supreme Judicial Court said in a lecture at the City Bar last month, the state courts in this nation are in crisis.

In New York State this crisis includes judicial compensation that has made judges justifiably angry and dispirited and is increasingly discouraging qualified attorneys from applying for judgeships; an insufficient number of judges; a selection method for the state supreme court that too often rewards political connections over merit; and an overwhelmed judicial system that, despite heroic efforts on the part of committed court administrators, is too often inefficient, resulting in justice delayed to such an extent that it far too often results in justice denied.

While days could be spent discussing each of these subjects I want to spend a few minutes this morning suggesting steps that might be taken now to address the last part of the problem I just mentioned, judicial efficiency. In particular I believe the able administrators comprising the Office of Court Administration, who have made extraordinary positive changes in the administration of the courts, should exercise even more imaginatively and extensively the authority given them by Amendment 3 of the 1977 Amendments establishing OCA.

10 Specific Recommendations

Here are ten specific recommendations that I believe would improve the efficiency of the courts and with that efficiency, a better system of justice.

1. *Recommendation 1*: Judges must be made more accountable and data must be created, maintained and analyzed to allow this to happen. When complaints about delayed trials, or delayed decisions, are raised the excuse is often that the system is overwhelmed and more judges are needed. While we need and must continue to advocate for more judges, "we can make things better," to use the words of Chief Administrative Judge Ann Pfau, even without additional judgeships. The economic crisis our State faces today is too important a crisis to waste; that crisis offers an extraordinary opportunity to improve judicial accountability and with it judicial performance. Faced with a drastic shortage of resources OCA should seize the moment and make judges aware of the importance of justice being dispensed not only fairly but also efficiently. Let me be more concrete:

2. *Recommendation 2:* Performance measures for judges should be promulgated setting forth the expectations to which judges in different parts and courts will be expected to adhere. While the independence of the judiciary is critical to the fair administration of justice, this independence does not excuse inefficiency. As a longtime champion of judicial independence I cannot emphasize strongly enough that an independent judiciary does not excuse judicial delay and inefficiency

Yet the examples of lack of efficiency abound. It is no secret, for example, that the delays in the New York City Family court are, as a recent report documented, "edging the family justice system toward danger." Custody disputes take months and sometimes years to resolve. Endless court hearings, sometimes as short as 15 or 20 minutes, accompanied by numerous adjournments, are too frequently the norm.

In the criminal courts multiple court appearances – "churning" some lawyers call them – is too often standard practice as well. Cases linger on clogged calendars with very little chance of moving to trial. A guilty defendant can simply wait for the ultimate speedy trial dismissal (and a potential subsequent lawsuit against the city for wrongful arrest) and innocent defendants can remain under the cloud of suspicion for

years. On the civil side, the fact that cases continue to remain in the system for years, with supposed final trial dates not being enforced, demeans the civil justice system and costs the courts, and the litigants, millions of dollars.

This entire culture must be changed. All court appearances should be made meaningful, churning eliminated and continuous trials made the standard. Judges should be empowered to insist that the various lawyers in a matter – particularly in Family Court -- appear before them on a date and time certain no matter what. Rules should be promulgated prohibiting excess adjournments, and mandating dates certain for trial.

3. *Recommendation 3*: The concept of Standards and Goals should be extended to individual judges. While standards and goals exist for much of the court system today, those standards must be extended to all courts, and particularly made specific to each judge, so that individual performance can be measured and accountability enhanced.

4. *Recommendation 4*: Focus on delayed decision making. Nothing makes me, and I would add the Mayor, more frustrated with the judicial system than when a case is not timely decided. When – as too frequently happens with respect to New York City and I am sure other litigants as well – a judge simply fails to make a decision in an effort to coerce a settlement, or because the Judge doesn't want to decide a difficult case, or the judge is inefficient in managing his or her case load, something is seriously wrong. Over the last eight years I have more than occasionally seen difficult or controversial cases go undecided for just these reasons. When a proposed action – rezoning a particular area, knocking down a building, regulating in a particular manner – is stopped for years because a fully submitted matter is pending undecided justice is frustrated, and the public suffers.

5. *Recommendation 5*. Make greater use of the so-called 60-day reports, the one already existing performance measure that lists how long a matter has been pending for decision before a particular judge. To the extent there is today any follow up with the individual judge on these 60-day reports that follow-up should be substantially increased.

6. *Recommendation 6:* To be sure that these 60-day reports are viewed seriously by the judiciary, OCA should make clear that a failure to file accurate reports, as I understand happens from time to time, will result in OCA filing a complaint with the Commission on Judicial Conduct.

7. *Recommendation 7*: Judges must be evaluated far more frequently than occurs today. The kind of data to which I have been referring, including the 60-day reports and an individual judge's compliance with additional performance measures, should be used by OCA, and made available to judicial screening panels, together with all other available information, to evaluate the performance of individual judges. Having now spent eight years advising the Mayor on judicial reappointments I am constantly amazed by the number of judges who, when faced with a series of complaints of a particular practice the judge follows, respond, I believe truthfully, by saying that he or she never heard the complaint before. Supervising judges must establish a procedure, similar to that followed in virtually every major businesses and law firm in this country, of regular and periodic evaluations and being sure that judges learn of the complaints about them, and are carefully monitored to see that the complaints, if justified, are being addressed.

8. *Recommendation 8:* To the extent that delayed trials, and delayed decisions, are the product of insufficient judicial resources, and that is certainly part of the cause, more attention must be given to moving resources around, even at the risk of alienating some parts of the judiciary. For example, it is no secret that there is a desperate need for more judges in family court, but unfortunately the legislature has not yet seen fit to authorize more judgeships. But additional judges – even if they are sitting as acting supreme court justices in the not as overwhelmed supreme court, criminal parts -- could – and I submit must -- be moved to criminal and family court.

9. *Recommendation 9*: A greater effort must be made to take cases out of the judicial system. We all know that the volume of cases in the courts, particularly family and criminal courts, is overwhelming and growing. For example in the last five years cases in the New York City family court have increased an average of 7% a year and this year have increased substantially more. Cases in the criminal court have recently increased an average of 3.3% a year. While OCA has taken imaginative steps to remove certain cases out of the system, and have them resolved, for example, by alternate dispute resolution mechanisms, significantly more must be done.

10. *Recommendation 10*: Added attention must be paid to two of the most overlooked groups of the judiciary's clients – the victims and witnesses who need to appear in court. Dignity in the court to all participants in the justice system is essential to the perception of the fair administration of justice. Yet we too often fail to accord that dignity to some of the players. When, for example, a crime victim misses a day's pay because he or she has come to court in the morning, only to wait until the end of the day for the case to finally be heard, or worse, adjourned, not only does that victim suffer, confidence in the system is hurt as well. Something must be done to deal with this unconscionable situation.

The Good News

These recommendations are not only needed, but are the logical next steps to many of the innovations OCA has already made. I refer particularly to OCA's successful efforts in changing the culture of the court system from the long-standing laissez-faire approach of the courts to one that makes clear that if a plaintiff wants to avail him or herself of a public forum dispute resolution, the timetables and rules established by the court system, not those of the litigants' counsel, must govern. I suggest OCA must now give increased attention to changing the culture of the judges themselves, and must emphasize to them the need for judicial efficiency and accountability.

The progress the Corporation Counsel's Office has made in dealing with its overwhelming caseload demonstrates what OCA, working with the Bar, can achieve. New York City is sued approximately 200 times a week, that's right, 200 times a week. The City is a party in approximately 20% of all civil cases in the State courts in this City. When I became Corporation Counsel in 2002, this volume had resulted in over 47,660 pending tort cases.

Today, we have reduced that number by almost 65% so that we have less than 18,000 pending cases; in addition, instead of 2,369 cases pending for trial more than eighteen months we have only 440. And all this was done with the amount the City pays out in tort judgments and settlements, while still unconscionably large – over $550 million annually – remaining essentially flat.

How did we do this? First, by some very, very effective lawyering, management and administration by our dedicated lawyers. And second, by working with the Office of Court Administration's creation of innovative programs, as well as with individual administrative judges, to devise procedures that would allow us to more effectively deploy our scarce resources to allow my office and the court system to do more with less, while at the same time being sure that every litigant against the City is treated fairly.

We Are All in This Together

This brings me to my last point. Working together the bench and the Bar have made substantial progress in improving the functioning of the courts, but there is a great deal left to be done. These joint efforts must continue.

At the same time, however, the state court crisis we face is obviously one that cannot be solved by court administrators and the Bar alone. To meet this crisis a broad coalition should be formed – composed not just of judges and lawyers – to galvanize public support. Civic groups favoring particular causes, advocates for victims of domestic violence, the homeless, children and the elderly, political groups demanding change, and business leaders – not just their general counsels – who depend on the courts to enforce both their contracts and the laws, must be made to recognize that unless they join in the call to strengthen the third branch of government their goals not only will not be met, but their causes and clients will be in grave jeopardy.

Conclusion

The more we can work together the better the end result will be. At the same time, we cannot hesitate to find new, and more efficient ways to dispense justice.

Over 100 years ago Roscoe Pound famously declared that court reform is not for the faint hearted or short winded. But we cannot afford to wait a year, let alone another 100 years, to improve the system. It must be worked on every day. This is what I learned from Cy Vance, that is what the last eight years have taught me, and that is what the Fund for Modern Courts stands for.

Thank you again for this incredible honor.

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