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OFFICE OF THE CORPORATION COUNSEL

Speeches

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For Immediate Release

REBUILDING THE CITY: THE OPPORTUNITY TO HELP AND THE OBLIGATION TO SERVE

***SPEECH GIVEN BY MICHAEL A. CARDOZO AT CENTRAL SYNAGOGUE'S JETHRO LUNCHEON ON
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My theme today is the opportunity and obligation each of us has -- non-lawyers and especially lawyers -- to help this City and its citizens. 9/11 presented us with an enormous challenge -- repairing the damage caused by the horrible events of that day and rebuilding New York City, its infrastructure, its economy and its psyche.

September 11 was not the first tragedy to hit this City. In 1776, a fire wiped out almost ¼ of all the houses in Manhattan. 222 years later, on August 28, 1998, as most of you in this room know only too well, this beautiful synagogue caught fire and almost burned to the ground. Out of those tragedies emerged even stronger institutions and a brighter future. New York rebuilt after the fire of 1776, just as it will rebuild now. And three years after the terrible fire here you dedicated a beautiful rebuilt sanctuary, a dedication that occurred only days before the fall of the Twin Towers.

Following the September 11 tragedy the initial response to the calls for help in rebuilding the City were very encouraging. However, there are now warning signs that lethargy and self-interest may prevent us from seizing the opportunity to help. We are at a critical juncture. We must make clear the importance public service and work in the public interest are to the future of this City.

Jethro Passage

This morning we read that Jethro observed Moses sitting "to judge the people . . . from the morning unto the evening." Jethro told Moses, and listen carefully to these words: "The thing that thou doest is not good. Thou wilt surely wither away, both thou and the people that is with thee, for this thing is too heavy for thee; thou are not able to do it thyself alone." If you try to go it alone, Jethro said, not only you, but the people that are with thee will wither away. You need help. How do you get that help? Listen again to what Jethro taught us. "Provide out of the people men of ability, such as fear God, men of truth, hating lucre." "Lucre," according to the scholars, means the hatred of oppression. Make such people judges Jethro said. "Enlighten them in the statutes and the laws," he concluded.

These words ring true today. The leader of the people, be he or she a Rabbi, a President, a Governor, a Mayor or even a Corporation Counsel, "is not able to do it thyself alone." We must find people of ability who hate oppression to assist us. Not only was there a need for judges to help Moses in biblical times, there is a need, especially today, especially in this City, for good people to pursue the goal of *ti ki no lum.*, bettering the world. While my remarks today will focus on the help lawyers should give, the need and obligation to help is applicable to non-lawyers as well.

Historical Obligation to Perform Public Service

The obligation to help those less fortunate has always been a fundamental tenet of the legal profession. The early Roman Empire provided for "advisors to the poor." By the Fifth century of the Common Era clergy were mandated to provide legal counsel to those who lacked resources of their own. A 15th century Statute of Henry VII

directed justices to appoint attorneys for poor people.

The obligation to perform pro bono service was embodied in the Lawyer Codes of Conduct in this country as early as the 1800s. The New York Code of Professional Responsibility today provides that lawyers have an obligation “to render public interest and pro bono legal service.”

Unfortunately, despite these biblical and ancient injunctions, and the pro bono obligation found in Lawyer Codes, documented studies confirm that in recent years pro bono work by attorneys has actually declined. Helping the poor, assisting society, no longer seems to command the commitment of the Legal Profession that it once had. In addition, the tradition of what Yale Law School Dean Tony Kronman has called the lawyer-statesman – lawyers moving back and forth between private practice and government – has virtually ceased. It has become harder and harder to persuade people of ability, and those who hate lucre, to enter public service

The 9/11 Story

9/11 changed all this. We saw an incredible outpouring of people seeking to help. Young people, and even old guys like me, wanted to step forward to volunteer.

In the days immediately after 9/11 I felt helpless; I wanted to do something but it seemed there was nothing I could do. Firefighters, police officers, rescue workers; they were the ones who were needed. Here was I, a lawyer, at a time when the rule of law in this country had just been savagely attacked, and I didn't know how to help. It was as if there had been an announcement: “Lawyers, white collar workers, intellectuals -- to the back of the line. We don't need you.” I felt empty; I wanted to do something.

I saw a powerful show a few months ago that captured much of this feeling. A writer, feeling totally useless after 9/11, had been put in touch with a firefighter who had lost many colleagues as a result of the attacks. This firefighter had to give eight eulogies in two weeks. But he was a firefighter, not a writer, and he didn't know how to express his feelings, or what to say.

This writer helped this firefighter put his thoughts into words, so he could give the right eulogy for each of his fallen brethren. When the firefighter went to thank the writer, she said no, I want to thank you, because you allowed me to do something meaningful with my life at a time I was feeling so empty. You allowed me to help.

This desire to help was certainly what captured the imagination of the lawyers in this City. As Judith Kaye, our revered Chief Judge, and a prior recipient of the Jethro Award, has written, 9/11 was the Bar's Shining Hour.

Shortly after the World Trade Center attack literally thousands of lawyers volunteered to help the victims' families. The volunteer lawyers helped those families obtain needed legal documents, and counseled them on landlord tenant disputes, employment issues, custody matters, health benefits, wills and immigration problems. More than 700 small businesses received free legal advice, as did community groups and non-profit organizations. This help came from lawyers in large firms and small, from in-house attorneys employed by more than 75 different corporations to single practitioners. Plaintiffs' trial lawyers even agreed to represent the families of the victims for free.

As Judge Kaye has written: “What an example of humanitarianism -- the very best of humanity responding to the barbarous acts of the very worst of humanity. What an example of professionalism -- lawyers licensed in a public calling responding to a cry for help, fulfilling the time honored responsibility to render pro bono service.”

The lawyer heroes of 9/11 were not just the volunteers; they included lawyers working in the public sector as well.

On September 11, 2001, four months before I became Corporation Counsel, more than 500 lawyers in the Corporation Counsel's Office narrowly avoided death when they escaped from their office building, located directly across the street from the Twin Towers. As they raced out of the building some of these lawyers saw people jumping out of World Trade center windows. One Assistant Corporation Counsel ran to a nearby childcare center to pick up her baby; just behind her, another Assistant Corporation Counsel saw an engine from one of the planes fall on the street. A third lawyer, whose job the next day was to begin to make the Corporation Counsel's Office operational again, lost his home in the attack. All 500 lawyers were obviously emotionally shaken, and were left with no offices, no files and no computers.

Yet within days the Corporation Counsel's Office had set up shop at the Family Center at Pier 94. Corporation Counsel lawyers, using their own computers, and with no precedent forms to guide them, wrote the executive orders and legislation needed to allow this city to continue to function. The lawyers also prepared applications for over 2,000 death

certificates so families of victims could obtain those certificates without the usual three-year wait. And along with the lawyer volunteers, they provided legal counsel to the families of the victims of this terrible tragedy.

It was an extraordinary emotional ordeal; but as one Assistant Corporation Counsel told The New York Times, “I felt incredibly privileged to be able to work on this. To be able to help a family at such a terribly difficult time, a family whose grief I can’t even fathom, that was really such an honor.”

The awful events of 9/11 were a siren call for help to meet the challenges faced by the city. Imagine if those lawyers in the Office of the Corporation Counsel had been unable or unwilling to write the emergency laws. Consider the consequences if the volunteer lawyers had not been available to give free legal advice to the families of the victims and the small businesses that were threatened with economic devastation. The lawyers stepped forward and made a huge difference.

Our immediate response shows our resiliency and the ability to bounce back. 9/11 demonstrates how satisfying public service and public interest work can be and how important it is that it be performed. As Jethro said “the leader is unable to do it thysely alone.” Or, as Edmund Burke wrote more than 200 years ago: “The only thing necessary for the triumph of evil is for good men to do nothing.” We did do something after 9/11, and we must continue to do so.

Next Steps

The response to 9/11 offers powerful evidence that people of ability, who fear God and cannot tolerate oppression will work for the public good and rebuild the City. We cannot close our eyes, however, to some contrary facts with which we must deal.

Recall that at the same time volunteers were racing downtown to help, others were busy illegally enriching themselves. Wholly apart from some people doing the unthinkable and stealing personal effects at Ground Zero, some of America’s leading corporations were showing they had lost their moral compass. Enron was creating false sales. WorldCom was capitalizing what everyone understood to be operating expenses. Tyco executives were plundering the corporation as if it was their private piggy bank. Certainly not everyone was interested in helping others.

In the law firm world, the one part of American business with which I can claim some familiarity, many firms, contributed, as they always have in times of need, a great deal – in money and talent -- to charities, public interest groups and others. Many lawyers in those firms are active in numerous New York City organizations, serve on a variety of governmental commissions, represent the poor, and help the city in numerous other ways as well. In fact, in the face of the City’s fiscal crisis, and in response to my personal request, many of those firms have generously agreed to represent the city in various cases without charge and others have loaned associates to us to try tort cases.

But unfortunately, and notwithstanding the immediate response to the 9/11 emergency, most lawyers still do not perform community service. According to the New York State Office of Court Administration approximately half of all the lawyers in this State perform no pro bono work at all. Such work is not viewed as important either by the attorneys or by the leadership at a number of firms. In addition, the high salaries law firms pay, and the need for associates to work more and more client hours so firms can afford those salaries, makes pro bono work difficult to take on. There is simply not enough time. Too few firms tell their associates – and follow their words by concrete deeds – that in addition to working hard for clients, advancement will also depend upon the performance of pro bono service.

Let me be so bold to propose some ways to address this critical problem.

Law Firm Solution

I submit that, as some firms have realized, it is in the law firms’ economic interest to encourage their lawyers to perform pro bono service. Law firm associates who handle a case for New York City, or who provide pro bono representation to a poor person, obtain on the job training, and first hand experience, much earlier than they do when they represent regular firm clients. This experience makes the associate that much more of a valuable resource to the firm. In addition pro bono programs help relieve the associates of some of the malaise that too frequently saps them of their enthusiasm for the practice of law. It is an unfortunate fact in present law firm life that too many junior lawyers are disenchanting with their work. Pro bono programs give associates the first hand experience many feel is lacking in their everyday practice, and allow them to enjoy the satisfaction that comes with having helped a client, especially a poor or otherwise vulnerable individual, solve a problem. The result is that associates who perform pro bono work are more satisfied with their job overall.

In short, it is simply smart business to encourage lawyers to perform pro bono service.

The Larger Solution

But there is a more fundamental answer to the question of how to encourage pro bono and public service work. It lies in effecting a change in attitude. We must again make it fashionable to ask, as John F. Kennedy told my generation, "not what your country can do for you but what you can do for your country." We need to rekindle the flame of the importance of working for the public good that JFK lit more than 40 years ago.

We are poised today between continuing the ways of the immediate past, of continuing to work ever harder in the law firms, with public and pro bono service taking a decidedly back seat, or to reverse that trend, capture the spirit of the response to 9/11, and create an atmosphere where there is a desire to work for the public good.

To do this we must sound the trumpet of the satisfaction that comes with public and pro bono service. It shouldn't take a September 11 tragedy to bring this point home.

In the private sector pro bono service brings with it unique rewards. Lawyers who volunteered to help following the fall of the Twin Towers told story after story of how they felt after assisting the families in dealing with the tragedy. They told of the satisfaction they realized from working out an arrangement with a landlord to prevent the eviction of a victim's family, that had been rendered temporarily destitute by the events of 9/11. These lawyers told how good they felt in helping small businesses on the verge of bankruptcy apply for federal insurance to which they were entitled, but of which they were unaware. Last fall, on the anniversary of 9/11, hard-bitten lawyers in this city broke down as they heard the name of a particular victim recited by the readers at Ground Zero and recalled giving legal assistance to the family of that victim. As some of those lawyers said, looking back on those experiences, this is why I became a lawyer.

On the public sector side working for New York City has its own intrinsic rewards. In fact, I believe that the lawyers in my office experience far more job satisfaction than do many of their counterparts at the big firms. They gain first hand experience fast, they deal with exciting and challenging legal issues, and they are helping the city and its citizens. While the economic compensation they receive is significantly less than a private firm would pay, the countervailing rewards realized from working for the public good should offer a powerful incentive to work in the public sector.

Think of the opportunities right now, working for New York City. For example, what should be planned for the future of downtown Manhattan, including the World Trade Center site itself? What is the proper mix between residential and commercial space? So that the last portion of essentially undeveloped land in Manhattan -- the far Westside -- can be fully developed, should the number 7 subway line be extended westward and then south or should that money instead be used to build a Second Avenue subway? The answers to those questions will affect New York City and its residents into the next century

The more immediate issues facing New York City are equally profound. Now that the Mayor has taken over the control of the New York City School system huge challenges remain. How can we stop the hemorrhaging of money that is spent on special education classes? What entities should be created to replace the largely dysfunctional community school boards? The examples could go on and on.

And hanging over all of these issues is a fiscal crisis of such enormous dimensions -- a projected \$3 billion budget deficit next year -- that every decision in city government today must take account of that stark and in some ways frightening reality. Working for, or with, New York City enables you to participate in deciding how to solve this budget gap.

The challenges faced by the Corporation Counsel's Office are equally exciting and potentially rewarding. Let me give you a few examples out of the literally hundreds of issues with which my office must deal. Question 1: given a 25% increase in the homeless population (from 28,000 to 38,000 persons) in the last 12 months, should the City place some families in the dormitory section of a former, now unoccupied, jail, especially when the alternative is to spend millions of dollars on new shelter facilities the city simply cannot afford? Question 2: With terrorism threats on everyone's mind, but with civil liberties a fundamental tenet of our society, how, if at all, should a two-decade-old federal court decree be modified that presently limits how New York City police can use information it has gathered about suspected terrorist activity? Question 3: How do we explain to the Court that the heroes of 9/11 -- the firefighters -- are not entitled to sue the City for injuries they supposedly suffered as a result of putting out fires at Ground Zero after September 11? How can we convincingly tell the public that the City is not liable because a statute says so and in any event the City was not negligent? The total amount of those firefighter claims, by the way, total almost \$12 billion.

At a time when New York City is facing an enormous budget gap the responsibility for dealing with these issues can be daunting. Yet these decisions cannot be based only on dollars and cents. One must not forget his or her social

conscience, and basic values, in deciding what should be done. To help ensure that the right answers are given to the questions I posed, and scores of others as well, the people making them should be people of ability, who fear God, people of truth, who hate lucre.

We need to get the word out that if you become involved in public service you too can join this great effort. People must feel that it is fashionable, it is rewarding, it is prestigious, to work for, and assist, New York City. If it weren't I wouldn't be here.

Conclusion

We must also encourage lawyers in the private sector to perform pro bono work and must sing the praises of all who do. Law firms and businesses must create an atmosphere of encouraging a commitment to the community. We must change our value system to let the world know how important, exciting and rewarding all this work is.

I conclude by returning to the Jethro passage with which we began. Rebuilding "is too heavy for thee; thou are not able to do it thyself alone. Provide out of the people men, and I would add women, of ability" to work for the public good. We must start doing this today.

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