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OFFICE OF THE CORPORATION COUNSEL

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Speeches

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**A PRO BONO FRAMEWORK FOR THE FUTURE**

**SPEECH GIVEN BY MICHAEL A. CARDOZO TO THE NEW YORK STATE UNIFIED COURT  
PRO BONO CONVOCATION AT FORDHAM LAW SCHOOL ON JUNE 20, 2002**

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*[New York State Chief Judge Judith S. Kaye began the event with an introduction of Michael Cardozo and a story about the educational experiences of former Supreme Court Justice and New York State of Appeals Judge Benjamin N. Cardozo, to whom Mr. Cardozo is distantly related.]*

Thank you so much, Judith. I hesitate to start by correcting our Chief Judge, but the facts are that she has now admitted to an error. Judge Cardozo never graduated from Columbia Law School. The story is that while Judge Cardozo was at Columbia Law School, Columbia changed the law school from a two-year curriculum to a three-year curriculum and made the rule retroactive. So not only did Judge Cardozo refuse to abide by this retroactive decree, but that is the reason, people say, why he was interested in prospective overruling. But that's not the subject for today.

From my perspective, I think this conference is terrific. As she has done so often in the past, our Chief Judge has seized the moment to present a critical challenge to all of us: to design a workable system for pro bono services in New York. Rarely has there been a time when the need is so great, and in my view, rarely has there been a time when the Bar has shown -- at least a large part of the Bar -- a willingness to take up that challenge. I think our question today is: "How do we capture the pro bono spirit that we saw post-Sept. 11th, and how do we incorporate that spirit into some kind of workable system?" And as I look around this room, and I know almost as many of you as Judith does, I can't imagine a better group of people to solve that problem.

Certainly, as the Chief Judge said, we don't need to tell this audience about the need for pro bono help. The unmet legal need of the poor is overwhelming. We all see cases involving eviction, deportation, homelessness and so much more everyday. I hesitate to put a damper on the day's enthusiasm, but I do want to say that one area that will have difficulty helping in the foreseeable future is the government. Unfortunately, you have all read about the deficits. The City's deficit next year is projected to be higher than the deficit that, hopefully, will be closed when the City Council passes the budget this afternoon. The State's deficit is even worse, and projected to be worse still by next year. While we can all as advocates argue that the government should spend more money on Legal Services because that will reduce many of the things that government has to do, I think the brutal reality is that the likelihood of finding significant increased government help, in the foreseeable future, is small, which makes our challenge today even greater.

History has taught that in times like this, the Bar has stepped forward. The history of lawyers doing good work dates back almost to the beginning of time. I did a little research (as lawyers like to do) and found that as early as four hundred A.D., clergymen were being directed to find people to help the poor and assist them with their legal problems. Moreover, as we all know, the pro bono obligations that we all feel in this room are embodied in our country's lawyer codes. But I found it frightening and disturbing, when I read the materials for this conference, to learn that about half of the lawyers in this state do not perform any public service at all, and an equal number of them remain unconvinced that they should perform such service -- or that it is in their interest to do so and fun to do so. It was Edmund Burke, in the 18th century, who said that

“the only thing necessary for the triumph of evil is for good men to do nothing.” We can’t do nothing. We’ve got to find a way -- and I’m convinced that there is a way -- if we focus our efforts at younger lawyers, and younger people.

I was recently at a graduation ceremony at Dartmouth College, where my niece graduated, and there was a program there that honored all the graduating students who had performed public service. I was just amazed at the overwhelming number of people in that graduating class who had done things ranging from working in soup kitchens to spending a semester in Africa working with people with AIDS. The examples could go on and on. I said to myself, “A lot of these people are graduating and going to law school, and after they graduate from law school, they are going to start practicing law. How can we capture the spirit that is exemplified by these young people graduating from college, full of enthusiasm; how can we capture that spirit, so that after three years of law school and after they join a law firm or a legal employer, we can remind those people that they were so enthused about public service when they were in their early 20s?” There is a willingness out there, and somehow too frequently we lose that willingness five or 10 years later, when those people start practicing law. How do we capture that enthusiasm?

I think one way to do it is to focus law school programs. I know Columbia has one, I’m sure many, many other schools have one as well. The programs inculcate the pro bono spirit into law students, teaching them how much fun it is, how much satisfaction they’ll get doing it and that it’s an obligation. It’s vital.

Yesterday at the City Bar Association, there was a project sponsored by the Committee on the Homeless where it invited some associates to hear about pro bono opportunities in that area. They heard a terrific panel of speakers, including some of the very people in this room, talking with enthusiasm in doing pro bono work. We have to build up that enthusiasm. Last year, there was a conference of younger lawyers on the same subject. We have got to focus our attention on that. In my mind, there is no doubt that, despite the fact that half the Bar remains unconvinced, there is a terrific pro bono spirit out there.

The Chief Judge has called the Sept. 11th efforts by lawyers as “the Bar’s shining moment.” Think of the lawyers who lined up down 44th Street, around onto 6th Avenue a few days after 9/11, standing up to get training with the Bar Association to help the victims’ families. It’s a story that needs to be told over and over again. The examples of the Bar stepping up after 9/11 are not just limited to what we have heard of the typical Bar Associations. The Trial Lawyers formed an organization -- Trial Lawyers Care. They gave free legal advice to all the families of the victims as they went through and make applications to the Victims’ Compensation Fund. What a terrific statement of public spirit.

Also of extraordinary significance, in my view, is the way inside corporate counsel responded to the tragedy of 9/11. When I was president of the Bar Association, one of the problems we found when we talked about pro bono was that as difficult as it was to get some in the private Bar involved, it was even more difficult to get inside corporate counsel involved.

I’m happy to say there was a celebration last week sponsored by the American Corporate Counsel Association of all the efforts that were made by inside corporate counsel after Sept. 11th. I think it is extraordinarily significant that hundreds of inside corporate lawyers participated in all these post 9/11 events. I also think it is noteworthy that there is at least one corporation, and its representative is here today, that has established a Pro Bono Coordinator for the inside corporate counsel modeled after the way some private law firms are organized. I think that is very significant as we ponder how can we get more people involved in pro bono activities. It should not take a crisis of the dimension of 9/11 to convince our colleagues that pro bono should be a part of our regular practice.

But as Evan Davis wrote, “Adversity almost always has a counterpoint. From scandal comes reform, from disease comes medical advance . . . . The tragedy with which we are coping has revealed the Bar’s deepest character.” We have got to find a way to capture that character.

So what lessons can we learn from 9/11, what can we do, how can we make this all work? Let me suggest three principles as you go forward in your work today. First, we must motivate people to do pro bono. We must make them understand the satisfaction you get from doing pro bono work. Second, we must create a framework for legal employers to understand that it is in their self interest to encourage lawyers to perform pro bono work, and third, we must make it as easy as possible for that pro bono work to be performed. Let me expand on these themes just a little bit.

Motivation: Everyone in this room could tell story after story about the satisfaction that he or she has received from doing pro bono work. I do think it is a useful story for me to say that six months ago, I was a partner in a major New York City law firm. I had an interesting practice and loved the work and my firm. But now I am privileged to have what I think is one of the greatest jobs in New York City. And I think I have this job not because I was a partner at Proskauer Rose -- but more so because of the pro bono and legal services work that I did over the years. It was there, in public service

activities, that I was exposed to the issues of the pro bono challenges, the 18B issues, the homelessness issues and so forth.

One of my most enduring images as president of the Bar Association -- which today pales in significance to what happened on 9/11 -- but what I can remember vividly, is going to Kennedy Airport after the crash of TWA Flight 800. I stood there talking to the victims' families and telling them that there were 30 legal volunteers standing there ready to help. That was the satisfaction that I got, that I will never forget. We have to publicize that satisfaction over and over again. I think that the tragedy of 9/11 opened up the eyes of many, many lawyers to the satisfaction that you can gain.

But we can't stop there. We must make it in the employers' self-interest to have employees perform pro bono service. It's not enough for us to ring our hands and say, "These private law firms, they are making lots of money, their lawyers are being paid extraordinary amounts of money and oh, if they would only take a step back and do some pro bono service, that would be great." That is nice rhetoric, but we've got to make it in their self-interest.

It's hard to believe, but it's not so many years ago that we were having this debate about how can you persuade private law firms that it's in their self interest to employ minorities and employ women. It's an issue that we don't even debate today -- it's self-evident and we have to make it self-evident to the private law firms that it's in their self interest to perform pro bono work. I think we can do that. I suggest, number one, that we go back to the law students, the best and the brightest whom the law firms are competing for, and we have to encourage those law students to say: "Hey, which is the firm where I can best continue my pro bono efforts?" They will have to ask the hard questions of law firms, like: "What will my opportunities be to perform pro bono legal services if I go to firm A verses firm B,' because I think that is important and worth pressuring a firm over." At one law school with which I am affiliated, its the Board of Visitors passed a resolution encouraging law students to ask the question of their prospective employers: "What can I do if I go to your law firm for pro bono work?" We have to encourage that demand.

Second, as the Chief Judge has suggested, because pro bono is fun and is interesting, it is a way for younger lawyers to gain greater satisfaction in the practice of law. While private law firms are great and the challenges there are interesting, we all know that there are too many young lawyers who are not happy in the practice of law. However, they would be happier if their practice could have added to it, not just long hours, but the fact that they are also doing something where they are in court right away, where they are helping people right away and that they are not just a cog on a team of four, five or six lawyers.

Pro bono service does make the practice of law more enjoyable, and we have to educate the employers that it is in their interest to have their lawyers do the pro bono work because there will be great satisfaction. In that regard, I am encouraged by the following story, even though it stretches the definition of "pro bono" just a little bit into "public service."

As you all know, the City has a fiscal problem. A few months ago, I put out a "SOS" to all the law firms in the City. I said the Corporation Counsel's office does not have enough lawyers, and we cannot hire any more lawyers, because of the fiscal problem -- so please help! The private bar's response has been extraordinary. Twelve law firms donated an associate to us for six months at no charge to try cases. Close to 30 law firms have agreed to represent the City as public service volunteers. And although their young lawyers will get hands-on training and experience, I think these generous firms most importantly recognize a need to assist. They also want to fulfill their young lawyers' desires to help -- not just to help the City, which is what I sought, but to help in some way. There is a great desire out there to help, and that is to be acknowledged and commended.

I also think that the corporate counsel example that I mentioned earlier is another way that we have to show that it is in a private employer's interest for its employees to perform pro bono work. I commend Pfizer and the other corporations that have stepped up to the plate. We have to reward the corporations, we have to reward the law firms who do take action. For the others, we need to help make it in their self-interest to do so, because we do need, as the Chief Judge has said, "leadership from the top." We need to encourage all lawyers to help out. We have to find a way to make it good business for the law firms and the corporations to do pro bono service.

Finally, we have to make it easy. There are so many lessons from Sept. 11th that many of you know far better than I. The "one-stop shopping," I call it, that we offered after 9/11 -- where the lawyers were there, after appropriate training, at Pier 11 with other support groups helping people and serving as lawyers for victims' families. We have to make it efficient and uncomplicated, we have to eliminate barriers. Every time you do pro bono work and you have a bureaucracy to cut through, we lose the momentum. It has to be made easy. I hope we can all find some ways to do that today. I do know, in my view, that the energy of the lawyers and the willingness of the lawyers is there and is untapped. It is particularly there among the younger lawyers, though all of us can help out.

I hope today that everyone in this room can find a way to tap that energy, harness it in some way so that we can have a workable pro bono system in this State. Thank you very much.

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