



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Speeches

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**CORPORATION COUNSEL MICHAEL A. CARDOZO
ON “LOAN FORGIVENESS”**

***SPEECH GIVEN BY MICHAEL A. CARDOZO TO THE NEW YORK COUNTY LAWYERS
PUBLIC SERVICE AWARDS RECEPTION ON SEPTEMBER 19, 2007***

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It is a privilege to speak at this Public Service Awards reception and I commend the New York County Lawyers' Association for holding this annual event. It is so very, very important for the Bar to recognize the outstanding work of deserving public servants, such as the attorneys we honor tonight, whose work is critically important to the legal system and our society as a whole. For the last five and three-quarter years, serving as New York City Corporation Counsel, I have had the honor of leading a truly outstanding and dedicated group of public lawyers whose work reminds me, every day, of their importance to our justice system. Unfortunately, as I want to discuss in a moment, society too frequently does not recognize the importance of the work our public service attorneys perform.

One of our most quotable New Yorkers, Ed Koch, himself a lawyer, who spent most of his life in public service, has frequently said: “Public service is the finest thing you can do, if you do it honestly.” Why is that, and why, in particular, is that true for lawyers?

The answer, I think is that a lawyer, whether working for the government or as a legal services advocate, can make an extraordinary difference in people's lives. And making a difference brings with it enormous satisfaction.

Whether you are an assistant United States attorney prosecuting a person accused of membership in a violent gang, or a legal aid attorney defending that person, you are ensuring that the nation's criminal justice system acts fairly either to secure the conviction of a violent person or to acquit an innocent person wrongly accused of a crime. Appellate attorneys representing convicted criminals guard against the inevitable mistakes our criminal justice system may make by trying to identify and set aside wrongful convictions. In the civil context, although potential jail time may not be an outcome, the consequences of what a public service lawyer does is no less significant. Legal Aid and MFY attorneys fight for individuals' ability to live in housing that conforms to basic standards of safety and habitability and against proposed attempts at demolishing such housing and displacing families. Civil legal service attorneys also provide valuable legal advice and representation to senior citizens as they maneuver their way through the intricacies of social security and Medicaid or Medicare. Attorneys at the Corporation Counsel's Office defend the City against multi million dollar tort and breach of contract claims and work on what is often ground breaking legislation such as the relatively recent changes in the City's school governance system. Attorneys working for the court system strive to assist the judges in making our justice system – the very essence of the rule of law on which this country is based – work, and work well. I am sure that most of you in the audience could fill in your own stories of what you do, the difference you make as a result, and the enormous satisfaction you realize by performing such work. This is why, as Mayor Koch said, public

service is “the finest thing you can do.”

There are of course many other reasons why public service is so rewarding. An attorney working in the public sector has the opportunity to assume major responsibility very quickly. There is no expectation that a government or public service attorney will spend years conducting document discovery before taking on front line responsibilities; rather, it is more common to be asked to conduct a deposition within a few months of beginning practice and to be writing, or arguing, summary judgment motions within that same time frame. Most importantly, in the public sphere, you are given the discretion and the privilege to do what is right. As the work of our honorees tonight reflects, they were asked to do the right thing; they did so, and they made a difference. The satisfaction and fulfillment they gained from doing the right thing, on behalf of an individual or the City or the country, is enormous. Tonight is an opportunity for us to say thank you for jobs very, very well done.

I could go on describing the enormous benefits of working as a public service lawyer, and the gratification I have received from this work. But I want to spend some time talking about a major problem that is preventing too many of the best and the brightest from becoming public service lawyers. And, I submit, if we don't take steps to solve this problem our society will not have enough dedicated and competent public service attorneys to address the varied challenges we face.

It is no secret why, despite the enormous satisfaction that comes from being a legal aid or government lawyer, most law school graduates do not even contemplate public service work. The answer is money. The salaries in the large New York City firms for the attorneys who graduated this past May average over \$160,000 before bonuses; their classmates who started work this month at Legal Aid, in the District Attorney or Corporation Counsel Offices are earning approximately one-third of that sum.¹ At some of the country's highest-earning law firms profits per partner of over \$1.5 million is the norm. In contrast, senior government attorneys are earning less than the \$160,000 salary first-year associates receive.

While there are many junior attorneys who are willing to enter public service and forego the huge earnings they could receive by pursuing a career at a firm, they still need to make ends meet and raise a family. In addition, over 80% of these new lawyers face law school and college debt obligations averaging almost \$100,000.²

I don't resent the substantial salaries paid by the large firms; indeed, having spent 35 happy years practicing law at one of them I have been the beneficiary of such largesse. I also recognize that public service salaries will never approach those in the private sector. But I do resent that meager public service salaries prevent too many attorneys from even considering applying to the District Attorneys Office, Legal Aid, the Office of the Appellate Defender, MFY Legal Services, or the Law Department. And for those attorneys who do begin their legal careers at these offices, it is difficult for them to consider staying at these offices beyond the minimum time period they have committed. Too often, during the time I have served as Corporation Counsel, an attorney has told me, frequently with tears in her eyes, that despite the extraordinarily interesting, engaging, and gratifying work of the Office, she is leaving to join the private sector because the salary makes it impossible for her to turn down a job offering four or five times as much money.

¹ *New York 2006, 2007 First-Year Salaries*, New York Law Journal Magazine, Sept. 2007, at 16, 19.

² See Senate Report No. 51, 110th Cong., 1st Sess. at 2 (2007). The Report states: “Over 80 percent of law students borrow funds to finance their legal education, and, according to the American Bar Association, the average cumulative educational debt for law school graduates in the class of 2005 was \$78,763 for private school graduates and \$51,056 for public school graduates.” (citing ABA statistics). See also *Lifting the Burden: Law Student Debt as a Barrier to Public Service*, ABA Comm. on Loan Repayment and Forgiveness, 2003, at 24.

When you consider the issues that public service attorneys handle, the unfairness and irrationality of the compensation differences between private and public sector attorneys becomes stark. Public service lawyers represent people in literally life and death cases such as representing indigent defendants on death row; or persons who face deportation and possible political reprisal if they are returned to their home country. In the tax arena, Columbia Law School Dean Schizer has reminded us that government attorneys are writing the laws and rules that impact how much revenue our government collects, and therefore, how high our tax rates must be.³ On the civil side government lawyers fight to protect New York City's water supply from pollution, defend New York City in what are sometimes literally multi-billion dollar procurement litigations or individual tort matters that expose the City to liabilities of up to \$100 million.. Corporation Counsel lawyers also draft critical local legislation, such as the bill, subsequently copied by cities throughout the world that banned smoking in restaurants and bars.

Aren't these endeavors socially valuable? Don't we as a society place a value – a high value – on the work of an attorney trying to prevent a defendant from being sentenced to death? Don't we as a society value an attorney who is working to ensure that the laws governing deportation are enforced fairly or who is protecting the rights of the infirm and the elderly? Don't we value the work of the City attorney drafting bills that will lead to improvements in our public health? The answer to each of these questions is "yes." Nonetheless, the compensation we offer the attorneys in regulated environments like the government and legal service organizations does not reflect the high value we place on the work they are performing.

But rather than wring our hands on the unfairness of the situation, I would like to offer a modest proposal to at least make an inroad into solving this problem. Specifically, governments, both federal and state, must find a way to help students who enter public service to pay down their law student debt. While this proposal would by no means put public sector law offices on an even playing field with private law firms, at least it would give many recent graduates a choice that they cannot even consider right now.

I suggest that a loan forgiveness program be structured as a "staying" or "retention" bonus;" for example, after three or four years of public service the government would provide the funds, each year, to pay off a certain amount of the public service lawyer's debt for as long as he or she remains in public service. The critical question is how such a program will be funded. While the potential funding methods are varied, one way is to tap into the money generated by the fees attorneys pay today – such as the \$250 bar exam and \$350 biannual registration fees. Those are sums that are paid directly by most public service attorneys, whose starting salary is in the mid-\$50,000 range, while many private firms pay those fees for their own lawyers, whose starting salaries are three times that amount. To compensate for the diversion of some of those funds to a loan forgiveness program both the bar exam and biannual registration fee could have a bifurcated structure, with a higher fee for lawyers employed by large or mid-sized law firms and a lower one for attorneys working in the public sector. In this way the private bar, in a modest way, could help subsidize those in the public sector whose work is so vital in making our justice system work.

There is some slight hope in both Albany and Washington that some kind of loan forgiveness program might become a reality. This year the State created a limited loan forgiveness program, structured along the lines I just mentioned, for attorneys employed by district attorney offices in the state.⁴ Unfortunately, the Legislature appropriated just \$1.5 million to fund the program, which expires in any event a year from now. Moreover, the legislation is limited to district attorneys offices, and, unlike other legislation that has been introduced in Albany,⁵ doesn't include public defenders, attorneys representing state or local governments, or civil legal service attorneys.

³ David Schizer, *A Few Good Lawyers*, N.Y. Times, April 16, 2007, at A19.

⁴ Laws of 2007, Ch. 56, Part H.

⁵ S.1938, State of N. Y. 2007-2008 Regular Sessions (2007); S.2313, 2007-2008 State of N.Y. Regular Sessions (2007); A.9111, State of N.Y. 2007-2008 Regular Sessions (2007).

On the federal side a somewhat similar bill, covering prosecutors and public defenders, has passed the House⁶ and is awaiting action in the Senate.

Enactment of these loan forgiveness bills, or better yet, adoption of the proposal I just outlined, would be a small but very important step in attracting attorneys to enter, and/or to stay, in public service and in recognizing and rewarding the critical role they play. It is essential, I submit, for the organized bar to lead a lobbying effort to effect this reform. In fact, such an effort was begun this summer by New York County Lawyers President Catherine A. Christian. In the summer issue of the New York County Lawyer, Ms. Christian emphasized that these loan forgiveness programs would both provide an incentive to recent graduates to enter public service and also help public sector employers retain experienced attorneys who can't afford to stay in those positions. Importantly, she also pointed out that loan forgiveness programs would also benefit victims, indigent defendants and courts because more qualified attorneys would consider entering and remaining in the public sector. I urge our State bar association, the City and local bar associations throughout the State, the heads of public sector legal organizations and law school Deans to echo Ms. Christian's call and to take the lead in championing this initiative and to press our representatives in Albany and in Washington, D.C. to pass these proposals.

I recognize that a loan forgiveness program is but a small step toward attracting attorneys to enter and remain in public service. But it is an important step that could make a difference. And, I submit, given the various different ways such a program could be structured and funded, putting such a program in place should be feasible, if the organizations I just mentioned, and the private bar more generally, lend their support to it.

There are numerous other ways public sector employers might attract and retain high quality legal talent. Time does not allow me to discuss these other options but let me make brief mention of one initiative my Office recently adopted; a liberalized part time work program that allows for attorneys with family care responsibilities to work part time unless the nature of the specific work they do and the needs of the Division in which they work preclude it. Public service firms should take the lead in thinking through ways that can make the work place one that is especially welcome and attractive notwithstanding the financial sacrifice presented by working in the public sector.

Let me conclude by quoting from one of my early heroes, John F. Kennedy. "A nation reveals itself," he said, "not only by the men it produces but also by the men it honors, the men it remembers." These Public Service Awards reveal the greatness of this Bar Association, and the bar more generally, because by recognizing the achievements of the people we honor tonight we are recognizing both the sacrifices they have made to serve in the public sector, as well as the significance of the work they do and the values they represent.

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⁶ S.442, 110th Cong., 1st Sess. (2007).