

MAKING A DIFFERENCE AND REALIZING PROFESSIONAL SATISFACTION: THE ROLE OF A GOVERNMENT LAWYER

Speech by Michael A. Cardozo at the NYU School of Law Leaders in Public Interest Series
Oct. 20, 2008 at NYU School of Law

Thank you for that very generous introduction. I hope you won't hold against me the fact that I went to law school a few miles north of here. After all, the New York City Corporation Counsel's Office has very strong ties to NYU. Not only are 44 of our 690 attorneys NYU graduates, making NYU one of the most well represented law schools in the Law Department, but also literally half of my six-member Executive Staff graduated from this Law School. In addition, last summer five members of our summer program came from NYU. These numbers are no accident – they reflect this institution's unwavering dedication to public service. And for that dedication, I salute you.

In a speech in New York in 1903, Teddy Roosevelt said: "Far and away the best prize that life offers is the chance to *work hard at work worth doing*."¹ For many of us, working hard is, in some ways, the easy part. I have learned in my own life, and especially from talking with many younger lawyers over the years, that finding the work that each of us finds "**worth doing**" often becomes the far greater and more difficult challenge.

To be sure, some of you here today may know exactly what you want to do with your law degree. Others of you may have come to law school because you couldn't

¹ Quotation available at http://www.quotationspage.com/quotes/Theodore_Roosevelt and http://en.wikiquote.org/wiki/Theodore_Roosevelt.

decide what else to do. Your dreams may not have been as concrete as some of your college classmates who may have opted for medical school with a mission to find a cure for cancer or another illness. But the law seemed like it could be intellectually challenging and held out at least the chance of helping someone else, of making a positive difference in this world.

So I was delighted to accept this invitation to speak at NYU's *Leaders in Public Interest Series* because it gives me an opportunity to talk about the unique rewards and satisfaction one can realize from being a government lawyer.

As you know from the introduction, I came to public service late in life. Notwithstanding a two-year detour to serve as President of the New York City Bar Association, I was pretty sure nothing was going to beat serving as chief outside counsel of several of the major sports leagues – including the NBA, the NHL and Major League Soccer. But in November 2001, when I got a call from a law school classmate of mine who was heading Mayor-elect Bloomberg's transition team, asking whether I would be interested in serving as corporation counsel, I had no hesitation in saying yes. While I had never met Michael Bloomberg, I knew that the chance to serve as the chief lawyer for New York City, and thereby potentially make a small difference in this world, particularly after 9/11, was a once in a lifetime opportunity.

So nearly seven years ago I was fortunate to begin my tenure as Corporation Counsel of the City of New York, as head of the City's Law Department. The position comes with the responsibility of overseeing an office of 690 lawyers, making it one of the

three largest law offices in the City and one of the three largest public law offices in the entire country.

The scope of the challenges confronting City lawyers was apparent from the start. It was January 2002, a time when our lawyers were scattered in 44 different locations necessitated by their temporary relocation, as a result of the tragic events of 9/11, from our main offices located across the street from Ground Zero. Many of those lawyers had answered the call to service by working on the Hudson River piers to assist the families of 9/11 victims with painful legal issues like the processing of death certificates. Today, while we are back in our main Office our City and our country face another enormous, albeit different, challenge arising from the country's economic crisis. And government lawyers will continue to be instrumental in meeting those challenges.

So what is the role of the government lawyer? What type of work can government lawyers expect to undertake? And why do I think the route of public service offers junior lawyers in particular a chance to find work worth doing?

In addressing some of the questions, I draw on my experience as Corporation Counsel, but similar examples can no doubt be found in the work of government lawyers in other public law offices, whether at the State Attorney General's Office, the District Attorneys' Offices, the Justice Department, or elsewhere.

Fighting for the public interest

For many government lawyers, the opportunity to advocate vigorously in support of the public interest is its greatest reward. Let me start with an example from the public

health arena. Mayor Bloomberg, early on in his Administration, persuaded the City Council to pass a law that banned smoking in virtually all public locales in New York City. It may be hard to recall today the outcry that accompanied that legislation – but it was fierce and marked by predictions of the death of City nightlife as we know it. The politics were very hard, but the Mayor was committed to saving lives – perhaps hundreds of thousands of New Yorkers - and he told the lawyers in my office working on the then proposed smoking legislation that it could be the most important effort they would ever take on in their professional lives. It was City lawyers who researched the scope of the City’s powers, who structured and drafted the legislation to ensure its validity and who then advised on how best to enforce and defend it, so that the measure was more than an empty promise.

The results have been dramatic. Since passage of the legislation, smoking in New York City has declined to its lowest level in fifty years – and that means 100,000 fewer people in this City will die prematurely from smoking-related diseases. Imagine the satisfaction felt by the lawyers in the Corporation Counsel’s Office who worked on that legislation and related litigation. This is the work of government and its lawyers.

But the legislative ban was only one part of our legal strategy. If we are serious about reducing smoking, we have to ensure that the significant State and City taxes on cigarettes, which have proven a deterrent to smoking especially among the young, are actually collected. So City lawyers have taken aim in the courtroom at Internet cigarette sellers who evade the taxes by falsely advertising that Internet cigarette sales are tax free and by neglecting tax reporting obligations. We have also sued wholesale sellers of

cigarettes that abuse a limited tax exemption afforded to Native Americans – these

wholesalers supply the Indian reservations with literally hundreds of millions of cartons of tax-free cigarettes each year that are then re-sold to *non-Native American* New Yorkers, including to City residents. In addition to encouraging smoking, such unlawful tax-free sales deprive the city and state of tax revenues estimated at \$1 billion annually, taxes that, in part, fund vital public health programs.

When the problem of these illegal cigarette sales became an epidemic, it was City lawyers who were asked the question: what should the City do? What *can* we do to prevent this? City lawyers answered with innovative claims based on RICCO, the Civil Racketeering Act that provides for treble damages, and the Contraband Cigarette Trafficking Act, another federal statute. As you may have read, New York City has recently added to the effort by filing suit directly against certain retail Indian reservation sellers. All of the cases are now proceeding and their mere filing has already resulted in a major deterrence in illegal cigarette sales.

Let me turn to another example of an imaginative legal strategy – conceived and executed by corporation counsel lawyers - to combat a different kind of challenge: illegal hand guns. Consider these two facts: First, from 1995 to 2005 more than 70,000 handguns had been recovered by the New York City Police Department mainly from individuals who were prohibited by law from possessing guns. Second, fifty-seven percent – more than half – of all those illegal guns came from just over 1% of all gun dealers located throughout the country.

So what did City lawyers do? First, we identified out of state gun dealers whose guns had been recovered at a New York City crime scene. We then sent undercover

agents into those dealers' stores that were located in Ohio, Pennsylvania, South Carolina, Virginia and Georgia. Wearing a video camera hidden in the peak of a Yankee baseball cap, the agents videotaped those gun stores engaging in gun sales that violated federal law, typically by failing to determine that the purchaser was bona fide, did not have a criminal record, and was of the requisite age.

We then sued those stores in federal court in Brooklyn, alleging a common law nuisance, and asserting long-arm jurisdiction against the out-of-state stores - remember, that arcane personal jurisdiction principle you learned in civil procedure? - on the theory that the wrongful conduct out-of-state could be foreseen to have a potential effect in New York. The result? Settlements have been reached with virtually every one of the 27 out-of-state stores we sued, but not before there had been extensive discovery, including two separate depositions of Mayor Bloomberg himself. In most instances the settlements involved the court appointing a federal monitor to oversee those stores' sales practices. Because of the deterrent effect of these lawsuits there has been a 16% decrease in the number of crime guns coming into the City from the five states where we sued gun dealers. Residents of New York City are, I believe, safer because there are fewer illegal guns in New York City. And that increased safety is because of the dedicated work of the lawyers in my office. To say this was a challenging litigation, and resulted in enormous satisfaction to the lawyers who worked on the case, is a significant understatement.

As an aside let me note that both the gun and smoking litigations are being run by a 1985 graduate of this law school.

[Time does not allow me to discuss other legal initiatives in the public health and safety areas, but let me simply mention the City's banning of the use of trans fats in food sold in restaurants and requiring disclosure of calories on restaurant menu boards, and give you one guess who the lawyers were who drafted the relevant regulations and defended them – thus far successfully – in court.]

Adhering to the highest standards of our profession

But conceiving novel legal strategies and drafting and defending litigation attacking landmark legislation is not the only role played by the government lawyer. The extraordinarily important issues that a government lawyer deals with bring a significant responsibility. An interesting debate can be had on who is the client of the government lawyer – the City of New York as an entity, the 8.2 million people who live here, or someone or something else. There is not time for that discussion tonight, although Professor Bill Nelson of this law school has recently written a history of the Law Department, entitled Fighting For the City, in which he discusses the issue at length. But regardless of who the government lawyer's client is he or she must recognize that the legal advocacy on behalf of that client must come within required ethical standards.

This is not always easy. The pressures to say “yes” to your client, as many of you will learn, can be enormous. Telling the Mayor of the City of New York, the Police Commissioner, or the head of a City agency, that a contemplated course of action is illegal requires a great deal of fortitude. Understanding that a troublesome and embarrassing document must be produced in response to a discovery demand, and being sure it is in fact produced even though it may make your agency client look bad, is

difficult. But as a lawyer – whether in the private or public sector – that is your job. And as a *government* lawyer the standards are, as they should be, even higher.

Unfortunately, we do not have to look very far to discover the scope of the damage that can be done when government lawyers breach the public trust. To take but one of far too many recent examples in Washington, we now know that over the last few years lawyers in the United States Justice Department made personnel decisions that, at a minimum, violated the civil service laws. Those actions, and perhaps others in the Justice Department, have no doubt diminished the public's faith in the sanctity of the judicial process and thereby damaged our country.

If there is a lesson to be learned from recent events, it is that the government lawyer must not only provide the vehicle for achieving public policy objectives; he or she must also know how and when to provide the brakes.

The promise of significant responsibility

As you move on with your legal career, you may hear of studies indicating high levels of professional dissatisfaction among attorneys. I can't say I know all the reasons so many lawyers report being dissatisfied. But I think sometimes we focus too much on the idea that such dissatisfaction relates solely to how hard lawyers work, attributing it all to burn-out. I suspect it may have as much to do with disappointment in the nature of the work itself and the responsibility, or lack thereof, given to the lawyer. It is certainly not unusual for younger lawyers, accustomed to the intellectual challenge of academia, to find themselves unfulfilled by some of the work that may accompany one's early years in the law.

The move from law school to the practice of law can be difficult. The professional route you take is not, and should not be, an easy decision – it's a choice that is going to matter to you a great deal. And each of us will find that some factors, prestige for example, may matter more to us than it does for others. Money is of course, a factor that cannot be ignored. For many recent graduates, the crushing burden of student loans will seem to constrain choices.

It will come as no surprise to hear that the biggest drawback for people considering a career as a government lawyer is often the financial sacrifice involved. But I want to tell you about the flip side. Along with the importance of the matters being handled by government lawyers, the significant responsibilities entrusted to them, even early in their careers, present enormous rewards. Like any government law office the Corporation Counsel's Office simply has too much to do to relegate junior lawyers to research and memo writing.

Let me give you some recent examples:

During the last 12 months our Special Federal Litigation Division, which handles cases brought against the Police Department for wrongful arrest, excessive force and other actions, had nine trials handled by lawyers who were less than four years out of law school, and four of those trials were handled by lawyers out of law school just two years. Similarly, 17 of the 23 hearings and trials the Law Department's Labor and Employment Discrimination Division handled in the last year were handled in whole or in part with lawyers out of law school less than four years.

The junior attorneys in our Family Court Division, who prosecute juvenile delinquents in New York City and who in that capacity are supposed to weigh the safety of the public with the best interests of the juvenile (not an easy balance), appear in court virtually every day.

Our torts division lawyers are assigned to try approximately 20 to 25 tort cases a week. Think of that number. That means that 1,000 cases in which New York City is the defendant can be sent out to trial every year. And in the last year, 40 of those cases were taken to trial by lawyers no more than four years out of law school. Our tort cases are extraordinarily important since New York City pays out in judgments and settlements over \$550 million a year that could otherwise help the City hire more teachers, fire fighters and police officers.

[As an aside let me mention one particular challenging category of tort cases we are handling, the almost 10,000 cases brought by individuals who worked on the clean up at Ground Zero, who claim that they became sick because of the City's alleged negligence, including not giving workers adequate warnings of health hazards, and failing to supply workers with face masks to prevent polluted air from entering their lungs. Not only are these challenging tort cases in and of themselves, involving questions of the applicability of state and federal civil defense statutes, negligence, causation, and injury determinations, but they raise the basic public policy question of who should pay for the aftermath of the 9/11 terrorist attacks.]

To return to the work of our younger attorneys let me give you one final example: two years ago, when the United States Supreme Court, ruling in the City's favor, decided

that US courts had subject matter jurisdiction to determine a real estate tax dispute involving millions of dollars between the City of New York and the government of India, a key lawyer sitting by my side at the Supreme Court counsel's table for oral argument was a junior one. He was two years out of law school, this law school in fact, when he began work on the case in the district court and followed it through the Second Circuit. By the time the case reached the Supreme Court, he was still less than 5 years out of law school. By comparison, it took me 41 years to get to the nation's highest court – but, hey, who's counting? By the way, four of the approximately 80 cases the Supreme Court decided that year were handled by the New York City Law Department.

So the point is, as a government lawyer, the sky, or rather the Supreme Court, really is the limit.

Confronting a diversity of legal issues

The work of government lawyers, especially here in the City, is also defined by the diversity of the legal challenges we confront daily. Our office, for example, will have lawyers defending a tort case at the same time other lawyers are litigating to address global warming. Indeed, with respect to global warming, we joined with a number of states in suing the federal government because of its failure to promulgate carbon monoxide emissions regulations, a case in which we prevailed in the Supreme Court. Similarly, we joined with other governmental entities to successfully sue the federal government with respect to its insufficient fuel economy standards. An entire evening could be spent describing the enormously challenging and satisfying work of the Corporation Counsel's Environmental Law Division, whose lawyers now includes a 2008

graduate of this Law School. The Division's work also includes issues relating to the transportation out of the City of 12,000 tons of municipal waste *each day*, and the protection of the New York City water system, a system that stretches into upstate New York.

Since 9/11, we have also faced the stark realities of threats from Al-Qaeda and others, and related questions concerning how best to balance our cherished civil liberties against the obvious dangers posed by terrorism. You may recall that shortly after the bombing in the London subway system in the summer of 2004 the New York City Police Department announced a program of random searches of bags brought into the subways. Litigation was the inevitable result as the plaintiffs argued this program, which was not based on a need to show probable cause, violated the Fourth Amendment's prohibition on unreasonable searches and seizures. The Law Department prevailed in the Second Circuit because the Court found that the program was narrowly tailored and analogous to a security check at airports, and that the person searched had the option of declining the search and not using the subway. This case, along with scores of others, including various suits for false arrest arising out of the Republican National Convention, have put the Law Department on the cutting edge of striking the proper balance between protecting against terrorism and civil rights in the 21st century.

A different kind of threat to the City's safety, and certainly its economic well-being, arose from the subway strike of a few years ago in the middle of the holiday season. It was a team of lawyers from the Law Department's Labor and Employment Discrimination Division, incidentally all graduates of this law school, along with lawyers from the MTA, who went to court – literally at 4 o'clock in the morning – and persuaded

a state court judge to issue an injunction against the strike, and later to find the Union in contempt of court when it violated that injunction. It was those same city lawyers who persuaded the judge to issue contempt fines that had the ultimate effect of forcing the union to end the strike

It was an exhausting effort, but City lawyers were the key in bringing the strike to an end. Headline cases? For sure. Cutting edge legal issues? Yes. Satisfying when New York City finally returned to normal after the strike? You bet it was.

A government lawyer has lots of interesting legal work beyond the courtroom or the legislative arena. For example, City lawyers play an integral role in city development projects, ranging from negotiating the new Yankee and Mets stadium deals, to rezoning the upper west side and Atlantic Yards in Brooklyn. [Some of these complex corporate transactions, all of which were intended to improve the City and expand its ultimate tax base, raised the controversial specter of eminent domain. Law Department attorneys have played a major role in Washington and Albany lobbying against some of the eminent domain legislative proposals that have been made in reaction to the Supreme Court's 5-4 Kelo decision upholding the use of eminent domain. Closer to home, we have been heavily involved in condemnation proceedings involving these economic development opportunities and defending against various claims that the required environmental review for these projects was inadequate.]

Our lawyers have also sought to expand the City's revenue base by leveraging the City's intellectual property rights, a concept relatively unheard of in American cities. Just as the Yankees, Knicks and Giants logos, properly marketed, are worth millions of

dollars, we thought the same could be true for the City if, for example, the City granted a company the right to say it was the official soft drink of New York City, or held the exclusive rights to make New York City bus shelters. City lawyers worked to create a New York City marketing vehicle for this purpose, an effort that has produced very substantial revenue streams and some fascinating intellectual property litigation concerning the logos of the NYPD and the FDNY.

Time prevents me from detailing many of the other public policy issues with which the City's Law Department deals. [But let me give you just a few other examples. If the City Council passes a law that the Mayor feels is unconstitutional, must the Mayor enforce the law until the Court confirms that the law is unconstitutional. No the New York Court of Appeals ruled in a 4-3 decision. Is New York's domestic relations statute, which limits marriage to heterosexuals couples, unconstitutional? No the New York Court of Appeals held in another 4-3 decision.]

Finally, let me mention one final public policy dispute in which the Law Department is deeply involved, which has filled the press in recent weeks, and about which I testified before the City Council last week. The issue is term limits. Should the existing New York City law, which prohibits the mayor and members of the city council from serving more than two consecutive terms, be changed to allow for three terms? Is it legal for the City Council to make this change by legislation when term limits were originally enacted by the voters in a referendum? A substantial number of Law Department attorneys have been working very hard on these issues over the last few weeks, and, if the legislation is passed, and then challenged in court, they will be the ones to defend its legality.

The reward of work worth doing

The cases I described are typical of the cases a government lawyer is asked to handle. When you represent New York City you not only have the privilege of standing up in court and saying “I represent the City of New York,” you deal with the most pressing and interesting public policy disputes of the day, and have the opportunity to make a difference in the quality of life in New York City. And I think if you asked attorneys in my office whether the varied work of the office provides them an enormous sense of pride and a connection to a shared mission on behalf of the City, the answer would be a resounding yes.

What I hope our talk together this evening might illustrate is that there are indeed possibilities beyond the road most traveled by recent law graduates. The possibility of choosing a path that allows you to work on issues that have broad societal significance, a path that holds the promise of significant responsibility and of challenging legal questions while at the same time one that demands of you conduct worthy of the public trust.

Sandra Day O’Connor, who started off her professional life as a deputy county attorney, and who went on to have a fairly successful career, has said of her time as a government lawyer:

“Life as a public servant was more interesting. The work was more challenging. The encouragement and guidance from good mentors was more genuine. And the opportunities to take initiative and to see real results were more frequent. . . . At

every step of the way, I felt the thrill of doing something right for a reason that was good.”²

Let me conclude by adding something similar: A career as a government lawyer is unlikely to make you wealthy, at least not in terms of dollars and cents. But being a government lawyer will provide you with riches nonetheless - the reward of work truly worth doing.

Thank you.

² *March 8, 2004. Accepting the Elliot L. Richardson Prize for Excellence in Public Service. Full text available at Council on Excellence in Government:*
<http://www.excelgov.org/index.php?keyword=a4443c5561e109>