



NEW YORK CITY LAW DEPARTMENT  
OFFICE OF THE CORPORATION COUNSEL

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Speeches

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*For Immediate Release*

## CAREER HIGHLIGHTS AND LESSONS

**CORPORATION COUNSEL MICHAEL A. CARDOZO  
AT THE BROWN CLASS OF 1963 MINI-REUNION  
COMMODORE ROOM, NEW YORK CITY YACHT CLUB  
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### **Introduction**

After seven years in City government there are lots of things I could talk about but I thought what you would find most interesting is first to learn what the Corporation Counsel does, and then to hear a quick review of some of the things I have done working for Mayor Bloomberg. I also hope to leave some time at the end to answer any questions you may have.

### **Pre-Bloomberg**

I won't begin my story right after I last saw some of you – in June 1963 as we marched down the hill and through the Van Winkle gates. Instead I will start in November of 2001, when a law school classmate of mine, who was heading the Bloomberg Transition Team, called to ask me if I would be interested in being interviewed by Mayor-elect Bloomberg for the position of Corporation Counsel. My affirmative answer to that question changed my life forever.

I had never met Mike Bloomberg before he interviewed me and I had never before served in government. I had been in private practice ever since graduating from Law School and clerking for a federal judge. Instead of government law work I had been what was referred to as a sports lawyer, representing the NBA, the NHL, Major League Soccer and various other sports. My preparation as a sports lawyer obviously began at Brown where I was the manager of the Brown basketball team for three years. I knew Bill Bradley and Lenny Wilkins, both from their college playing days at Princeton and Providence College, and as key player representatives in the NBA. I had worked closely with David Stern and Gary Bettman and knew various basketball and hockey players and other sports officials. But I didn't know the politicians.

The closest I had ever come to government work, aside from serving on an occasional government commission, was when I was president of the New York City Bar Association between 1996 and 1998, where I had some brief involvement with a few of the legal issues confronting New York City. My qualifications for a job in government consisted almost entirely of my service as vice president of the Cammarian Club and as a member of the Faunce House Board of Governors.

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## What the Corporation Counsel Does

What does the Corporation Counsel do? Basically he is the chief lawyer for NYC, the mayor, all its agencies, the City Council, etc. When NYC gets sued – and it is sued on average 200 times a week, yes 200 times a week -- it is my job to defend the City. Of course, as you will hear, the Corporation Counsel's Office does a number of other things as well, including prosecuting juvenile delinquents, serving as transactional counsel on the City's development projects, doing the legal work for the issuance of municipal bonds, drafting legislation, giving legal advice to the Mayor and all City agencies, defending the City's tax base when tax assessments are challenged, and much much more. The Corporation Counsel's Office has approximately 650 lawyers and an equal number of non-lawyers, making the Office the second largest public law office in the United States, second only to the Justice Department.

## The Key Phone Calls

Seven plus years as Corporation Counsel has given me lots of stories; many of which began with a telephone call from a significant public figure. Let me share a few of those phone calls with you.

*Secretary Powell:* One call was from then Secretary of State Colin Powell. By way of background: one of the issues I dealt with, early in my tenure, was the long-standing problem caused by foreign diplomats refusing to obey the City's parking laws, and not paying parking tickets. This posed major traffic and security problems around the UN, and resulted in UN bashing by many politicians and the City tabloids. As we tried to forge a constructive solution through the US State Department, negotiations stalled, and the City announced it would be forced to begin towing the automobiles of foreign diplomats if the situation did not promptly improve.

Shortly after that announcement Secretary Powell telephoned. "Michael," he said, "I am calling you from Jerusalem where I am trying to negotiate a truce with the Palestinians and Israel. I just stepped out of the meeting to speak with you. Michael," he said, "do me a favor. Please, hold off a few weeks on towing those cars and when I get back I really think we can work this all out." I paused a moment, and said: "OK Mr. Secretary, I guess you have more important things to do at the moment." And while Secretary Powell unfortunately did not fully succeed in his negotiations, the City did satisfactorily resolve the diplomatic parking issue.

My foray into the diplomatic parking thicket led me to learn that a number of foreign missions not only were ignoring our parking laws, but also were failing to pay real estate taxes on those portions of their premises that were not being used for diplomatic activity. Given the over 180 foreign missions located in New York City this presented a significant revenue issue. So we decided to bring a test case against India and Mongolia, two of the largest real estate tax scofflaws. But could New York City sue a foreign country in US Courts? That seemingly esoteric issue, on which millions of dollars of real estate tax revenue turned, reached the United States Supreme Court where I had the honor of personally arguing the City's position. And in a 7-2 ruling the Court said we had a right to sue foreign governments in US courts. As a postscript, when the case finally then went back to the trial court the City won and was awarded over \$50 million in back taxes and interest; that ruling is now on appeal. And we recently settled a related case we had brought against the Philippines for \$9 million.]

*LGAC:* Another significant case I dealt with also began with a telephone call, this time from the Mayor. "Michael," he said, "Governor Pataki has just obtained an injunction that will cripple the City; it will prevent the State from implementing the recently enacted law that provides for the State to take over \$2.5 billion of New York City debt. *Do something,*" the Mayor concluded, and hung up.

The good news for New York City is that we were able to do something. We prevailed in the State's highest court after an oral argument that began with my telling the judges that if they declared the law illegal, as Governor Pataki had argued, New York City would have to layoff thousands of firefighters, police officers and teachers.

*Other Telephone calls:* The unpredictable life of a government official, or at least its lead lawyer, is highlighted by three other phone calls, each relating to a serious accident, that I received in the last few years. And after each such call, it took me a few minutes to realize why I was being called. The answer each time was not that I was needed to provide public safety, thank goodness for that, but rather that an incident had occurred that presented enormous potential civil and criminal liability to the city and legal help from my Office was needed. One call, from the Transportation Commissioner, told me she needed

admiralty lawyers because the Staten Island Ferry had just smashed into a pier and twenty people had been killed. That accident ultimately resulted in one city official being sent to jail and the City paying out \$65 million in civil damages.

A second call was to tell me there had been a terrible fire in the Deutsche Bank building downtown and three fire fighters had died. Two years after the fire the Manhattan District Attorney announced that his investigation had identified a series of alleged procedural failures by the City that may have contributed to the deaths. Nevertheless, he had determined New York City should not be indicted. However the civil lawsuits continue.

A third call, which I received while in a movie theater with my wife Nancy, was to tell me of an explosion near the UN that caused substantial damage on the East Side of Manhattan. Litigation over the claimed city responsibility for the explosion continues to this day.

Speaking of liability, I should mention that over each of the last seven years, the city has paid out, on average, \$550 million in tort trials and settlements, almost \$4 billion during the time I have been Corporation Counsel, an astronomical sum particularly at a time when the City is facing daunting budget challenges. And it goes without saying that it is ultimately my decision whether to settle or go to trial in each of those cases.

### **Cases with Major Policy Implications**

Representing the City involves far more than defending cases seeking huge damages; many of the cases I have been involved in raise major policy issues with which you may be familiar.

*Gay Marriage:* One example is gay marriage. Under New York State law it is the job of the Corporation Counsel to defend the City clerk, who issues marriage licenses. In 2005 a same sex couple had applied for a marriage license and the City clerk, after consulting my Office, had declined to issue the license because State Law did not provide for same sex marriages. A lawsuit followed.

On a Friday night the Judge hearing the case ruled that the New York law was unconstitutional. This meant that unless I, as Corporation Counsel, filed an appeal by Monday morning the clerk would be required to issue marriage licenses to all same sex couples who applied. The Mayor had said he supports gay marriage. And, in my role as President of the New York City bar association five years earlier, I had approved a report arguing the New York law was unconstitutional. One other fact. The Mayor, who was in then in the midst of his reelection campaign, was scheduled to speak before a gay and lesbian audience the next evening seeking their political support.

Should I file the appeal? The answer, I felt was yes. First, three other state court judges, ruling the other way, had declared the law constitutional, so it was clearly a close legal question. Second, and more importantly, it was clear that this was an issue that the State's highest Court — the New York Court of Appeals — would ultimately decide. I felt that Michael Cardozo should not, by failing to file an appeal, make the decision that a gay couple could come to New York City and be married, when that marriage, depending on subsequent court rulings, might ultimately be found invalid. Eventually the New York Court of Appeals, sustaining the city's position in a 4-3 decision, ruled that the law was constitutional and gay couples could not be married in New York until and unless the Legislature changed the law.

*Term Limits:* Another very interesting case, still in the headlines, involves term limits. As many of you probably know, New York City voters, on two different occasions, voted to limit to two the number of terms mayors and city council members could serve. Could those referenda be overruled by statute? As a policy matter opinion is divided. As a legal question the answer, in my judgment, is yes. I so testified at a City Council hearing last fall as the Council debated whether to change the law. And after the Council passed the law, extending the limit on the number of terms from two to three, it was my job to defend the new law's validity. So far we have prevailed, although the case remains in the courts.

### **9/11 Challenges**

Another category of interesting cases are those resulting from some of the aftereffects of 9/11. When I became Corporation Counsel in January of 2002 this country suddenly faced the reality of terrorism threats, and the incredibly difficult issues posed by the need to balance anti-terrorism efforts with our

cherished constitutional rights. As Tom Friedman wrote in the New York Times, we were one terrorist attack away from wiping out the bill of rights.

*The subway bag search:* One case illustrating the post 9/11 legal challenges involves the subway bag searches to which some of you may have been subjected. These were begun within days of the London subway bombings a few summers ago. It was my job, working with the Police Department, to devise a bag search program that would be effective, and would withstand constitutional attack. We designed such a program – random searches of people entering the subway system even though we had no suspicion the individual was doing anything wrong-- and the federal appellate court found the Program constitutional.

*Handshu and the RNC:* Two other cases, both of which are still pending in one form or another, which raise these terrorism/constitutional rights issues, deserve brief mention. One involves under what circumstances the Police Department can videotape political demonstrations and not violate the first amendment. Another is the series of cases that have arisen from the 2004 Republican National Convention, where hundreds of thousands of people were allowed to demonstrate peacefully but there were some arrests. 600 of those arrested, and who were subsequently released without being prosecuted, have sued, claiming the PD acted illegally.

*The WTC Cases:* Another category of cases arising out of 9/11 raise a host of other public policy issues. Lawsuits have been brought by over 9,000 people, most of whom were involved in the clean up effort at Ground Zero, claiming they became ill as a result of the environmental conditions there. They claim the City and the contractors who cleaned up the site are responsible for their ills, and should be required to pay literally billions of dollars in damages. It is my job to defend those cases. We are arguing that just because some of these people may have gotten sick, it does not follow that the City, which we argue was not negligent, should be responsible for their illnesses. 9/11 was an attack on America and it is the job of the federal government, not the City, to compensate the victims. Unfortunately the public policy issue presented by these cases – who, if anyone should be responsible for the individual damages caused when America is attacked – has arisen before, and will probably arise again. We have not yet reached a consensus in this country on how to answer this question, even though billions of dollars of taxpayer money is potentially at stake.

### **The Opportunity to Make A Difference**

Some people have asked me why I gave up an exciting private law practice to be corporation counsel. There are really two answers. First, as hopefully you can tell, it is a job presenting enormously interesting legal issues. Second, after 9/11 I, like so many, was depressed; there had been a terrible blow delivered to my City. I wanted to help and I didn't know how to do so. As Corporation Counsel you have the opportunity to make a difference by dealing with major issues of public policy.

*Guns:* One issue where the Law Department has perhaps made a difference is in the area of guns. Of the 70,000 handguns recovered by the New York Police Department over the last ten years almost all of them were recovered from people who were prohibited by law from possessing guns. And guns are a major killer in New York City. Moreover studies show that of all the gun dealers in the country approximately 1% of them supply almost 60% of all crime guns. The Mayor, who is passionate on the subject of stopping the sales of illegal guns, pointed out that if we could stop such illegal sales we could reduce significantly the number of deaths in New York attributable to guns. He then added, in his usual fashion: "do something."

So this is what we did. We identified out of state gun retail stores that had sold a large number of guns, which eventually had ended up in the hands of people in New York who had committed gun crimes. We arranged for two investigators, a man and a woman, to go into those stores to purchase a gun. The man would go through all the preliminaries of buying the gun. When it was time to complete the necessary paper work the woman accompanying him filled out the needed forms, a practice that was not only an absolute flat violation of federal law, but was being recorded by a video camera hidden inside the male investigator's Yankee baseball cap.

We then brought suit in federal court in Brooklyn against 27 of these out of state stores whose illegal actions had been caught on tape. Virtually all of those lawsuits have been resolved, with the defendants agreeing to a federal monitor who will review their sales practices for three years. And, let me add

parenthetically, crime guns recovered in New York that had been sold in states whose gun sellers we sued have declined more than 16%.

*Cigarettes:* Another area where government lawyers have made difference is in the area of cigarette smoking. Not only did my Office draft the law that outlawed most smoking in public places in New York, but we also brought three separate lawsuits against cigarette sellers, whom we claim are selling cigarettes illegally and avoiding New York City cigarette taxes. One suit is against sellers of cigarettes on the Internet, who falsely advertise that if you buy cigarettes on the Internet you don't have to pay taxes. A second suit is against cigarette wholesalers who fail to pay taxes on their sales of cigarettes to Indian reservations, and a third suit is against retail sellers of cigarettes on Indian reservations, who don't pay taxes even when their customers are not native Americans. While all these suits are still pending, their mere commencement has already resulted in a sharp decline in these kinds of illegal cigarette sales.

### **Conclusion**

Let me conclude with these final thoughts. Working for the government is difficult. The pressures sometimes become intense; the politics sometimes nasty; and the pay is lousy. But we all learned at Brown that our education gave us the opportunity to make a difference. Those of us who were political science or history majors, as I was, were also taught how important government is, particularly good government. Hopefully I have helped this City to have good government over the last seven years, and at the same time have made a constructive difference in some public policy areas. Serving as this City's Corporation Counsel has been an experience of a lifetime, and I have enjoyed every minute of it.

Thank you.