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**“Advising Presidents:
Robert H. Jackson and the Problem of Dirty Hands”
William Casto
26 Georgetown Journal of Legal Ethics, 183 (2013)**

**“The Conflicting Ethical, Legal, and Public Policy Obligations
Of the Government’s Chief Legal Officer”
Michael A Cardozo
The Professional Lawyer, Number 3, Volume 22 (2014)**

Participant Preparation Questions

The articles address the professionalism duty a United States Attorney General (Robert H. Jackson), the White House Office of Legal Counsel (Jay Bybee, John Yoo), and New York City Corporation Counsel (Michael A. Cardozo) owes, and to whom, in a variety of disparate circumstances.

- I. Did Attorney General Robert Jackson act in a professional and ethical manner when he gave a legal opinion to President Roosevelt that he knew was contrary to law, but reasonably believed was in the public interest? Does the answer to this question hinge upon whether Jackson should be regarded as legal officer of the United States or as lawyer for the President? If so, was Jackson justified in determining the capacity in which he was acting?
- II. Can Jackson’s actions be defended on the basis that “every proposition is arguable?”
- III. Can Jackson’s actions be defended on the basis of the “moral obligation” of government attorneys? If so, is this concept of “moral obligation” also applicable to attorneys who are in private practice?
- IV. Did Corporation Counsel Michael Cardozo act in a professional and ethical manner when he appealed the New York Supreme Court decision that the law prohibiting gay marriage was unconstitutional, even though he and Mayor Bloomberg strongly favored legalizing such marriages?

Does the answer to this question hinge upon whether Cardozo should be regarded as lawyer for the Mayor or as an official obligated under all circumstances to uphold the laws of the State of New York? Would Cardozo have been justified in acting, as Jackson did, on the basis of “moral obligations” of government attorneys? Do you agree with Cardozo’s criticism of Attorney General Holder’s decision in the litigation about the constitutionality of DOMA?

- V. Cardozo is the only one who self-defined his duty and to whom it is owed. How do you think Jackson and Jay Bybee/John Yoo would characterize their respective duty? And to whom?**
- VI. Is there an application of Walzer’s dirty hands analysis to any of the circumstances described by Cardozo? Machiavelli’s exhortation to the Prince? Bobbitt or any other commentator?**
- VII. How would each official analyze the actions of the others?**
- VIII. Which position would you like to hold?**