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William E. Nelson, Fighting for the City: A History of the New York City Corporation Counsel

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William E. Nelson, *Fighting for the City: A History of the New York City Corporation Counsel*

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**WILLIAM E. NELSON, FIGHTING FOR THE CITY:
A HISTORY OF THE NEW YORK CITY CORPORATION
COUNSEL**

*Reviewed by Douglas D. Scherer**

Professor Nelson's excellent historical book on the New York City Corporation Counsel focuses on the work of public officials who served as legal advisors and advocated for the City of New York from the founding of the City in 1686 through the end of the administration of Mayor David Dinkins on December 31, 1993. The book provides limited discussion of Corporation Counsels under the subsequent administrations of Mayors Giuliani and Bloomberg, from 1994 through 2006.

When New York City was chartered as a municipality in 1686, the original charter provided for a person to serve as Recorder, performing the functions of city judge, attorney, and record keeper. From 1686 until the end of the eighteenth century, the Recorder was a politically powerful advisor to the Common Council, the City's governing body, and played an active role as a judge. For example, Recorder Daniel Horsmanden presided at the trial of those accused of participating in the 1741 Slave Conspiracy.¹ At the end of the vari-

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¹ WILLIAM E. NELSON, FIGHTING FOR THE CITY: A HISTORY OF THE NEW YORK CITY CORPORATION COUNSEL 7-10 (2008).

ous trials, Horsmanden had sentenced thirteen African Americans to be burned at the stake, seventeen African Americans to be hanged, four whites to be hanged, and eighty-six people to be exiled from the colony.² With respect to the Recorder's non-judicial role, Professor Nelson noted: "By the middle of the eighteenth century, in short, Recorders who served as legal advisors to the Mayor and Council already were shouldering the main tasks performed by the Law Department today."³

The book discusses the careers and contributions of eighteenth and nineteenth century Corporation Counsels, and the interplay between mayoral politics and legal representation by the Corporation Counsels of the City. For example, corruption in the Office of the Corporation Counsel developed in tandem with corruption among Tammany Hall politicians, which contrasted with high standards for lawyer competence, ethical behavior, and independence from politics during other periods of time.⁴

A major event occurred in 1875 when William C. Whitney was named Corporation Counsel. Whitney served until 1882 and created a City Law Department with highly competent lawyers and a modern law firm operational structure.⁵ He hired lawyers from elite law schools, eliminated reliance upon outside counsel, and required City department heads to obtain advice and representation from the City Law Department.⁶ He was able to operate with independence

² *Id.* at 10-11.

³ *Id.* at 21.

⁴ *See id.* at 134-38.

⁵ *Id.* at 69.

⁶ NELSON, *supra* note 1, at 71.

from other City departments in his representation of the City, and this gave him control over the legal work done for the City.⁷

Whitney resigned in 1882 and was succeeded by Corporation Counsels who continued his approach, including William H. Clark, an 1889 Tammany Hall appointee.⁸ In 1895, however, a new Corporation Counsel, Francis M. Scott, “brought politics back to the Law Department.”⁹ By then, the Law Department “was the largest and busiest law office in the nation.”¹⁰ The responsibilities of the office expanded with an increase in litigation and more frequent legal advice being given to City officials.¹¹

For twenty years after consolidation of the Bronx, Brooklyn, Queens, Staten Island, and Manhattan in 1898, the Law Department operated largely unchanged despite mayoral changes, but with an increasing number of attorneys hired on the basis of political patronage.¹² This opened the door to success for large numbers of lawyers who did not come from families with wealth and social status. As described by Professor Nelson: “Tammany Hall, in sum, used the Law Department to provide upward socio-economic mobility to its brightest workers.”¹³ He elaborated on this as follows:

We should hesitate about taking at face value the claim of turn-of-the-century reformers that they hired all “the best men.” Admissions standards for the elite

⁷ *Id.* at 72.

⁸ *Id.* at 74, 79.

⁹ *Id.* at 80.

¹⁰ *Id.*

¹¹ NELSON, *supra* note 1, at 80. The Department, by 1897, “had thirty-eight lawyers and seventy-seven clerical employees” and worked on 3,320 lawsuits. *Id.*

¹² *Id.* at 97.

¹³ *Id.* at 109.

schools from which reformers hired entry-level attorneys were not based on merit, but on lineage and wealth. Many able youths, who were excluded from the Ivy League and comparable schools, had to claw their way up through institutions like Tammany Hall. While graduates of elite schools probably had superior educational experiences, many of the young men whom Tammany brought into the Law Department possessed real talent and were fully capable of performing the city's legal work despite their lack of elite educational credentials.¹⁴

This reflected the future trend of hiring from elite law schools, combined with the hiring of top students with law review experience from non-elite law schools. Professor Nelson recognized this in the following: "Thus, what the twenty-year battle between Tammany and the Fusion movement ultimately accomplished was to provide the Law Department with skillful lawyers from both elite and less influential schools."¹⁵

At the beginning of the twentieth century, the Law Department played a crucial role in providing legal advice that enabled the "construction of the City's infrastructure."¹⁶ It also supported economic regulation of business and taxation of property owners. Further, the Law Department adopted a non-enforcement approach to New York State morals legislation, relating to preserving the Sabbath, gambling, alcohol consumption, and prostitution.¹⁷ This led to

¹⁴ *Id.* at 109-10 (footnote omitted).

¹⁵ *Id.* at 111.

¹⁶ NELSON, *supra* note 1, at 113-14.

¹⁷ *See id.* at 120-23.

“the development of a cosmopolitan rather than Puritanical city.”¹⁸

Tammany Hall controlled the City and the Law Department from 1917-1933. Promotion on the basis of merit was the norm, with lawyers being hired based upon their academic performance in law school rather than their family backgrounds and graduation from elite law schools. Unfortunately, corruption in City government, under Mayor Jimmy Walker, spilled over into corruption in the Law Department. Professor Nelson described this as follows:

All we can know for sure about the Law Department between 1918 and 1933 is that it was very much part of the Tammany Hall machine and that it participated in at least some and overlooked more of the corrupt practices of that machine.

More significantly, the Law Department shared Tammany’s convictions about ethnicity and money. Tammany’s leaders did not regard men from aristocratic backgrounds or elite educational institutions as their superiors Tammany used the Law Department as a vehicle of upward mobility for young men, and even young women, of ambition. And, in return for opportunity, it made one major demand—loyalty.¹⁹

A shift occurred in 1918 concerning morals legislation, in part because of pressure from the Roman Catholic Church. Laws relating to alcoholic beverages were not enforced, despite the 1919 ratification of the Prohibition Amendment to the United States Constitution.²⁰ But, sex was taken seriously by Tammany Hall and the Law Department, which resulted in arrests and prosecutions of gay men

¹⁸ *Id.* at 123.

¹⁹ *Id.* at 137-38.

²⁰ U.S. CONST. amend. XVIII (repealed 1933).

and prostitutes, establishment of a City censor for motion pictures, and “a determined effort to close down ‘indecent and immoral’ plays performed live on Broadway.”²¹ Efforts also were made to enforce observance of Sunday as the Sabbath, and there was a “crackdown on gambling . . . to reduce the amount of money that organized crime could siphon out of underclass communities.”²²

The new direction of the Law Department reflected the political objectives of Tammany Hall. This was described by Professor Nelson as follows:

Tammany and the attorneys it appointed to the Law Department fought for what its voters wanted— inexpensive urban services, the defense of Roman Catholic moral values, and the availability of innocent pleasures that met with the Church’s approval.

. . . .

. . . [T]he Corporation Counsels recognized that what mattered is not whether they won the fights they started, but that their choice of fights represented what Tammany’s constituents wanted. It did not actually matter whether Tammany delivered services for the underclasses as long as the underclasses remained convinced that Tammany was fighting the good fight.

. . . Charles Murphy’s Tammany Hall . . . may have been one of the first political organizations to appreciate that, in a democracy dependent on mass voting, fighting evil is more important to retaining power over time than defeating evil.

However we evaluate Tammany’s approach, understanding it will place the machine’s personnel policies in the Law Department in a clearer light. Perhaps, attorneys who have honed their skills and out-

²¹ NELSON, *supra* note 1, at 143 (quoting *A.H. Wood Theatre Co. v. Gilchrist*, 193 N.Y.S. 259, 260 (Sup. Ct. N.Y. County 1922)).

²² *Id.* at 145.

performed their peers in highly ranked academic institutions will provide superior legal services and win more cases than more ordinary lawyers. . . .

But, if the goal is neither to win cases nor to impress insiders with the quality of legal services—if the goal is to fight the fights the people want fought—then it is more important to employ attorneys who remain close to the people than attorneys with elite backgrounds and fancy academic training. . . .

The coherence of Tammany Hall’s conception of law and of the role of Corporation Counsel and his staff in the legal system warrants our appreciation. Its conception was democratic and realist rather than aristocratic or formalist. Tammany saw law as a vehicle of power, not as an instrument of right.²³

Fiorello LaGuardia was the Mayor of the City of New York from 1934 until 1945.²⁴ He led the City during recovery from the Depression. He received substantial amounts of New Deal federal money, and the Law Department played a major role in obtaining federal funds and in insuring they were spent properly.²⁵ LaGuardia’s Corporation Counsel, Paul Windels, replaced most of the assistant corporation counsels and returned to the earlier practice of hiring based upon academic credentials rather than political affiliation.²⁶ He hired nine female attorneys, including Jane Bolin, an African American woman who became “the nation’s first African-American female

²³ *Id.* at 150-52.

²⁴ NYC.gov, Elected Mayors of New York City: Fiorello Henry LaGuardia, http://www.nyc.gov/html/nyc100/html/classroom/hist_info/mayors.html (last visited Mar. 24, 2009) (“Fiorello LaGuardia, or ‘Little Flower,’ is widely regarded as one of the best mayors in New York City history, whose tenure redefined the office.”).

²⁵ *Id.* (describing how former Mayor LaGuardia “worked closely with the New Deal administration of President Franklin Roosevelt to secure funding for large public works projects”).

²⁶ NELSON, *supra* note 1, at 161.

judge.”²⁷ However, the Law Department also was used in many ways to advance the political objectives of Mayor LaGuardia.

Democratic mayors controlled the City and the Law Department for twenty years after LaGuardia left office, from 1946 through 1965.²⁸ There were eight Corporation Counsels during this period of time, “[n]one of [whom] had a profound impact on the Law Department.”²⁹ During this period, the assistant corporation counsels “performed the City’s legal work in a sound professional fashion and continued to provide the Law Department with intellectual leadership.”³⁰ Unfortunately, patronage appointments of lawyers to the Law Department led to some very good lawyers doing “nearly all the work.”³¹

Also during this period of time, the Law Department vigorously supported efforts to remove Communists from City government jobs. These efforts were strongly supported by the Roman Catholic Church. Professor Nelson described this development as follows:

[T]he Law Department’s anti-Communist effort was more than one of the darkest moments in its history. More significantly, anti-Communism marked the full-blown emergence in city politics of a sort of legal demagoguery that remains familiar in American politics today.

• • • •

. . . Tammany’s purge of Communists from city gov-

²⁷ *Id.* at 164 (footnote omitted). See Douglas Martin, *Jane Bolin, the Country’s First Black Woman to Become a Judge, is Dead at 98*, N.Y. TIMES, Jan. 10, 2007, at A21.

²⁸ NELSON, *supra* note 1, at 183. From 1946 to 1965 William O’Dwyer, Vincent Impellitteri, and Robert F. Wagner, Jr. were the Mayors of New York City. *Id.*

²⁹ *Id.* at 183.

³⁰ *Id.* at 189.

³¹ *Id.* at 190.

ernment marked one of the first sustained occasions in American history on which political leaders relinquished control over a divisive issue and turned to government lawyers to realize a cultural agenda. Sadly the lawyers, in thrall to a majoritarian democratic ethos and hence oblivious of their obligation to comply with laws adopted by government for the defense of all citizens, did the majority's bidding.³²

The Mayor's office was under Democratic control and the Corporation Counsel and "declined to take a strong, imaginative stand in addressing issues of racial and religious discrimination."³³

A very different role for the Corporation Counsel emerged with the 1965 election of John Lindsay as Mayor of the City of New York. Lindsay's Corporation Counsels, J. Lee Rankin, Norman Redlich, and Frederick Nathan, fully supported Lindsay's efforts to serve the needs of African-American and Puerto Rican residents of the City.³⁴ They sought to eliminate police brutality against African-Americans and Puerto Ricans, partly through attempts to establish a Civilian Review Board.³⁵ Additionally, the Corporation Counsels wanted to improve the quality of public education by changing "the governance structure of New York City's schools in order to give African Americans and Puerto Ricans greater voice in the education of their children."³⁶

During the Lindsay Administration, an honors program was

³² *Id.* at 196.

³³ NELSON, *supra* note 1, at 216.

³⁴ *Id.* at 232.

³⁵ *Id.*

³⁶ *Id.* at 235.

established to recruit excellent recent law school graduates to the Law Department. The purpose was to invigorate a legal staff dominated by civil service lawyers over whom the Corporation Counsel had limited control.³⁷ The honors program survived into future administrations.³⁸

The attack on institutionalized racism, the unsuccessful battle to establish a meaningful civilian review board, and battles with unions over wage increases all occurred when the City faced a fiscal crisis.³⁹ This led to an undermining of the independence of the Corporation Counsels—they were called upon to provide political support for the mayor. Professor Nelson described the Lindsay years of the Law Department as follows:

Thus, Lindsay's lawyers were advocates for an ideological agenda, not for the city as a whole. Their advocacy reflected a new and noble conception of the role of the Law Department as defender of equality and individualism—a noble idea that attracted some eager, able youths who have remained with the department and continued to render valuable service to the city over time. Unfortunately, however, a majority of New Yorkers were not committed either to truly full equality or to genuinely individualistic values. And, in the deeply democratic polity that New York City was and is, that noble idea could not survive.⁴⁰

³⁷ *Id.* at 223.

³⁸ NYC.gov, New York City Law Department—Summer Honors Program, <http://www.nyc.gov/html/law/html/careers/honors.shtml> (last visited Apr. 20, 2009). The summer honors program receives 3,000 applications each year from which approximately fifty interns are selected.

³⁹ NELSON, *supra* note 1, at 240. For an interesting take on Mayor Lindsay's term as Mayor, see Robert D. McFadden, *John V. Lindsay, Mayor and Maverick, Dies at 79*, N.Y. TIMES, Dec. 21, 2000, at A1.

⁴⁰ NELSON, *supra* note 1, at 239-40.

Others might express a more positive view and say this period of time was the Law Department's finest hour, with its valiant, though unsuccessful, efforts to achieve the goal of racial justice.

Mayor Abraham Beame inherited the economic problems that developed during the Lindsay Administration. The size of the Law Department was reduced because of the fiscal crisis, and patronage hiring replaced non-partisan merit hiring for those vacancies that did occur.⁴¹ Additionally, the Law Department's success in litigation declined.⁴² The status of the department was described by Professor Nelson as follows:

As Edward I. Koch was running for Mayor in the autumn of 1977, the outlook both for the city and for its office of [the] Corporation Counsel was bleak indeed. By the mid-1970s there had been occasions when neither city government nor the Law Department could perform its basic functions. A dramatic turnabout was needed. John Lindsay had promised one, but had failed to deliver it. As he took the oath of office on January 1, 1978, the question was—could Ed Koch do any better?⁴³

Mayor Koch's first Corporation Counsel, his former law partner Allen Schwartz, inherited an understaffed Law Department with low morale and generally poor performance. Schwartz ended patronage appointments and hired new lawyers based upon the excellence

⁴¹ *Id.* at 242.

⁴² *Id.* at 249.

⁴³ *Id.* at 249-50.

of their academic credentials.⁴⁴ He moved the Law Department to a different building and created office spaces equipped like those of major law firms.⁴⁵

In his first year, merit-based hiring yielded ninety-five new lawyers, forty of whom were women.⁴⁶ He created three new divisions, one of which was the Economic Development Division that focused on the economic development of New York City.⁴⁷

The Law Department began to represent the City the way a major law firm would represent a corporate client, with the economic well being of the client being its primary concern. Social objectives were not the focus of concern, and partisan politics were kept at a distance. Schwartz prevented most outside practice of law by Assistant Corporation Counsels and initiated a pro bono program through which lawyers from major law firms handled litigation for the City, without a fee for services.

Allen Schwartz's successors, Fritz Schwarz and Peter Zimroth, continued the approach established by Schwartz of "zealously representing its client, the city of New York, in the manner in which a law firm represents a business entity."⁴⁸

The success of the Law Department under Allen Schwartz's leadership was described as follows by Professor Nelson:

Allen Schwartz's achievement, in turn, lay in

⁴⁴ *Id.* at 256, 258.

⁴⁵ NELSON, *supra* note 1, at 257.

⁴⁶ *Id.* at 262.

⁴⁷ *Id.* at 263. Schwartz also created the Fiscal and Securities Division to "advise[] city officials . . . with the issuance and sale of municipal bonds," and the Commercial Litigation Division, which "took over much of the work of the old contracts division." *Id.* at 263-64.

⁴⁸ *Id.* at 275.

recognizing that the reconstitution of a department of law made it possible to recreate a professional Law Department. By obtaining necessary funds, acquiring professional-quality space, reorganizing and closely managing divisions, and hiring top-flight attorneys on the basis of merit, Schwartz succeeded in transforming the Law Department into a professional office that represented its client as an entity and remained free from political pressures intrinsic to democratic municipal government to favor particular factions within the entity.⁴⁹

Mayor David Dinkins was elected mayor in 1989 and appointed Victor Kovner as his Corporation Counsel. Kovner was replaced less than two years later by Peter Sherwood, a former litigator with the National Association for the Advancement of Colored People Legal Defense Fund. According to Professor Nelson, “[n]either [Sherwood] nor Kovner made any significant changes in the staff of the Law Department.”⁵⁰

Professor Nelson did not provide an in-depth discussion of the Law Department under Mayors Giuliani and Bloomberg, but did note that the structure established by Allen Schwartz has been retained.⁵¹

The book provides an excellent view of the history of New York City through the lens of the work done by the principal lawyers for the City that dates back to the City’s inception in 1686. It is a well written, well organized, and detailed account of 323 years of development of the Law Department. The scope of the book, from the

⁴⁹ *Id.* at 284.

⁵⁰ NELSON, *supra* note 1, at 302.

⁵¹ *Id.* at 314.

days of the Recorder in the colonial period to the work of the Law Department under Mayors Koch, Giuliani, and Bloomberg, provides a unique insight into the governing process of the City of New York, from its beginning to the present day.