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## In Memoriam, W. Bernard Richland

Ross Sandler  
*New York Law School*

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IN MEMORIAM, W. BERNARD RICHLAND

(1909-2003)

A TRIBUTE BY ROSS SANDLER\*

In his eighty-eighth year W. Bernard Richland began to write his autobiography. Before passing away on August 14, 2003 at the age of 94, he completed a draft describing his first sixteen years. It is our loss that he did not complete the narrative of his life because what he did write was both revealing and important.

Richland participated with passion and intelligence in New York City's civic life for sixty years during which he also maintained a significant relationship with New York Law School where he taught local government law and litigation as an adjunct professor. In his last years he greatly encouraged the Center for New York City Law and supported it by donating books on local government from his personal library. Especially for those who knew or worked with him, he leaves a legacy of humor, creativity and learning.

Richland's autobiography tells us that he was born in 1909 in Liverpool, England, the seventh of nine children. Richland wrote, with irony, that his mother's origins were "something of a double aristocracy – Esther Cohen of the tribe of priests and scholars of ancient Israel, and genuine cockney – that is, London-born to Emanuel and Bessie Cohen, within the sound of Bow bells in 1872 when the bells of Mary-le-Bow Church could be heard within a mile radius." Richland's father, Julius, was born in 1868 in Lodz, Poland. Richland described him as 5' 4" in height, with sharp blue eyes, blond hair, and high cheek bones that marked him as a Pole. His name had been "Rieschlant" which made him of German Jewish descent, most likely, Richland says, part of the 17th Century immigration of German Jews into Poland who had been invited by Polish rulers to attract skilled merchants. At age 12, Julius Rieschlant left Lodz and headed west where, in Holland, he was taken aboard an English fishing schooner as cabin boy. Richland wrote

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\* Professor, New York Law School; Director, New York Law School Center for New York City Law.

that when his father arrived in Grimbsy, England, the schooner captain gave him a large wheelbarrow filled with fish to sell on the streets of the port. Julius sold the “whole caboodle, wheelbarrow and fish, to an enterprising customer for five bob and lit out in the direction of London, the only word he knew in English.”

Julius, Richland’s father, drifted into the Jewish community in London’s East End where he was unexpectedly recognized by one of his father’s relatives. The relative, Richland wrote, recreating his Liverpool speech, “took me Da home and put him to work in his tailoring business. After seeing to it that me Da got bar mitzvahed to protect his father [Richland’s Grandfather] from being responsible for me Da’s sins,” the relative threw Julius out compelling him to make his own way.

Richland’s father worked as an itinerant tailor’s assistant in various parts of England and Scotland. He met and “conquered me Mother in London,” Richland wrote, by convincing her that he was an “unemployed diamond merchant.” They were married on November 1, 1896 in London’s Spital Square Synagogue.

Richland described his mother as an inch taller than his father, and it was she who held the family together as his father continued to roam even after marrying. The marriage was not happy despite the nine children it produced. Richland wrote that while his family, like others around it, was not close to the edge of deep poverty, he knew no child who wore gloves: “Whatever warmth our hands had was from keeping them in [our] pockets or blowing on them.” Liverpool was beset with misery especially after the First World War. Richland wrote that his family “did not escape membership in the hard times, but me mother was a genius at making do and keeping us from hunger and her hedge was the simple fact that in all her life she never saw the inside of a pub . . . We had food and we were warm and spotlessly clean; most of our school mates were none of the above. Me Mother, when needed, also got odd jobs in the tailoring trade, sewing button-holes in men’s jackets and overcoats, perfectly wrought to last forever.”

Richland savored memories of the foods of Liverpool like blood puddings called “black jocks” and “scouse,” which he described as “well mashed and thoroughly boiled potatoes saturated with meat-flavored brown gravy, and from which the Liverpool peo-

ple derived their nickname of “Scouse.” In keeping with that nickname, Richland entitled his draft autobiography “Liverpool Scouse to New York City Dignitary.”

Wanting to read and have his own library card, he endured the disdain of the “library ladies” of which there were two, “one skinny and one fat, and both disagreeable and haters of grubby, small boys.” The library ladies required the boys to wash their hands and present them for inspection before touching a book. He recalled other memorable characters from his childhood such as the “knocker-up-woman” who walked the streets in the early morning carrying a long stick with which to wake the working men who had no clocks. And he described the competing St. Patrick’s Day and Orange Parade that pitted the Catholics against the Protestants, with Richland joining both camps as appropriate.

Richland attended St. Simon’s School in Liverpool, where he was a star pupil, graduating at the age of 14. On leaving St. Simons, Richland went to work in Liverpool as a messenger at the Northern Publishing Company and its *Corn Trade News*, where his older brother Stanley had worked. Stanley, at 16, had left England for New York, and another brother, Sidney, mustered out after wartime service in the British army, had also left for America. Finally, in 1925, Richland’s mother obtained visas for the rest of the family to go to America. The money for the voyage to America came from an insurance payment. Stanley, the economic hope of the family who was making his way in America “was killed at age 18 by a speeding automobile in Brooklyn while on work assignment. His accident insurance and worker’s compensation award paid for [the] family’s passage to the New World and a new life.”

Richland arrived in New York City in March 1925. He was 16 years old, and his first job was as “a sort of beast of burden” in An-nin’s Flag Company in Lower Manhattan, where he carried “enormous bundles of American flags to the old Post Office near City Hall and piles of solid oak flag poles to shipping agents in obscure side streets off the waterfront dock areas in midtown.” Six months later, in September 1925, “a miraculous rescue” came: “I was told of a vacancy in an office boy position in a law office and was assured by a distant relative that the job was mine to take . . . . The office was that of New York’s most distinguished lawyer, the former New York

Court of Appeals Judge Samuel Seabury, located in the most elegant and impressive professional and commercial address – The Equitable Building at 120 Broadway.”

Richland wrote that on being hired he sat at his little desk in the waiting room of the law office and welcomed visitors and announced their presence. Richland recalled, “[D]uring the first week on the job, I went in the Judge’s room to announce a visitor. In my carefully enunciated Liverpool accent I informed him that Mr. (Whoever) asked to be admitted to his presence. The Judge looked at me and rang for his secretary, and when she came in he pointed at me and said to her, ‘What did he say?’ From then on, for a few weeks I would inform Miss Peterson of a visitor for the Judge and let her announce the visitor’s presence.”<sup>1</sup>

Richland kept Seabury’s law library up to date and got into the habit of reading the reports of judicial decisions when he was not delivering messages, serving papers or filing them with the County Clerk’s Office and the Surrogate’s Court. With experience, Richland took over the tasks of a law clerk, including answering the calendar at Special Term Part I on the second floor of the old Tweed Courthouse behind City Hall. This allowed him to observe the lawyers and judges, which he loved, and this was where he began to learn the craft of a trial lawyer. The assignment “put me in the middle of active lawyers and law clerks,” he wrote, “and I could sing out the proper response ‘Adjourned by consent for one month’ or ‘Ready for the Motion [or to oppose].’”

Here, the personal part of Richland’s autobiography ends. There was much more for him to tell, but he never got around to writing it. We do not have his insider report on the years when he worked with Judge Seabury on the investigations into municipal corruption that in 1933 led to the resignation of Mayor Jimmy Walker. Nor did he tell how he convinced Judge Seabury to sponsor him as a clerk so that he could take the bar examination and be admitted to the bar in 1937 at age 28 despite the lack of any ad-

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1. A slightly different version of Richland’s introduction to Samuel Seabury’s office is told by Herbert Mitgang in HERBERT MITGANG, *THE MAN WHO RODE THE TIGER: THE LIFE AND TIMES OF JUDGE SAMUEL SEABURY* 129-130 (1963).

vanced degrees.<sup>2</sup> We are also missing his stories about the cases and matters he handled during the fifteen years<sup>3</sup> he worked at the New York City Law Department or how he managed to run the department for three years during the fiscal crisis when he served as Corporation Counsel to Mayor Abraham D. Beame. There is also the question of his self-education about which he did not write except for two brief mentions in the autobiography. After he left St. Simons, Richland wrote that he often visited Liverpool's Picton Reading Room which was the only library with open shelves. The Reading Room closed at seven on late nights, leaving less than one and one half hours after the end of his work day. There he recalled picking shelves randomly by topic, usually "the least useful volumes" and reading through the volumes on the shelf. He also mentioned a "marvelous discovery" he made later in New York City, Night High School, and that he attended Washington Irving High School on Irving Place in Manhattan. Richland described night high school as "actually secondary schools which provided full sized education after primary school, with excellent teachers and educational tools, conducted on a full-time basis with structured courses beginning at 6:15 p.m. and ending at 10." In Herbert Mitgang's biography of Samuel Seabury, Richland is quoted as saying that it was Seabury who had urged Richland to attend Night High School.<sup>4</sup>

The work in Judge Seabury's office laid the foundation for what was Richland's passion: his deep involvement with the government of the City of New York. From Judge Seabury's office, Richland moved in 1943 to the New York City Law Department where he rose to be chief of the Opinions and Legislative Division. The division, as its name suggests, reviewed all state and local legislation and prepared formal and informal opinions for agency heads. Denis M. Hurley, Corporation Counsel from 1951 to 1954, in his 1952-53 annual report to Mayor Vincent R. Impellitteri, wrote that the division also handled litigation "of more than usual importance to the public and city government."<sup>5</sup> For example, Richland led the

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2. Judge Seabury's sponsorship of Richland is mentioned in MITGANG, *supra* note 1, at 130. Richland took law courses at NYU School of Law during 1932-1936, but did not receive a degree.

3. Richland worked for the New York City Law Department from 1943 to 1958.

4. See HERBERT MITGANG, *supra* note 1.

5. Denis M. Hurley, Law Department City of New York Report 1952-1953, at 62.

city's litigation team in a complicated case that arose out of State legislation that had compelled the city to transfer management of its subways to a new public authority, the New York City Transit Authority, the forerunner of the Metropolitan Transit Authority.<sup>6</sup>

In 1958, Richland left the Law Department for private practice, but stayed heavily involved with local government. In 1958, Governor W. Averell Harriman appointed him to the State Commission on Home Rule, and, in 1960, Mayor Robert F. Wagner appointed him as General Counsel to the Mayor's Study on Housing and Urban Renewal. Richland's Final Report sent to Mayor Wagner advocated a vigorous program for the construction and retention of privately-owned, middle-income housing. During this same period, Lt. Governor Frank C. Moore, then chairman of the New York State Commission on Governmental Operations of New York City, asked Richland to draft proposed amendments to the New York City Charter. These proposals partially laid the basis for the 1961 revision of the New York City Charter that centralized important operational responsibilities under the mayor. From 1960 to 1964, Richland was a member of the Commission on Home Rule of the State Office of Local Government. In 1964 and 1965 he served as special counsel to the World's Fair.

In 1965, in what he called his "fall from grace," Richland ran in the Democratic primary for Council President on the ticket headed by mayoral candidate Paul O'Dwyer. His opponents for Council President included Daniel Patrick Moynihan and Frank D. O'Connor, the eventual winner. Ten years after the election when Richland had been named Corporation Counsel, he recalled his candidacy as hopeless: "I've been nonpolitical all my life. That was my one indulgence. It was a hapless, hopeless contest, run from a wonderful old ramshackle headquarters that you had to take a freight elevator to get to. I came in last, of course – but I got 200 votes on Staten Island. I think it was a case of mistaken identity."<sup>7</sup>

Richland's experience with City government made him an acknowledged expert on home rule—that arcane subject that deline-

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6. *Salzman v. Impellitteri*, 124 N.Y.S.2d 369 (N.Y. Sup. Ct. 1953), *aff'd*, 122 N.Y.S.2d 787 (N.Y. App. Div. 1953), *modified*, 113 N.E.2d 543 (N.Y. 1953).

7. Steven R. Weisman, *City's New Corporation Counsel: Wilfred Bernard Richland*, N.Y. TIMES, Jan. 16, 1975, at 29.

ates the powers and relationships between the New York State Legislature and the cities of the State including the City of New York. His work on home rule culminated in an authoritative two-part article published by the *Columbia Law Review* in 1954-55 which, with typical passion, attacked the Court of Appeals for its "systematically narrow judicial interpretation" of the 1924 Home Rule Amendment to the State Constitution that was intended to expand local decision making and to protect cities from intervention by the Legislature.<sup>8</sup> As Richland analyzed the Amendment and subsequent Court of Appeals decisions,<sup>9</sup> the Court had wrongly undermined the home rule reforms and rendered the cities of the state no freer from the dominance of the Legislature than if the 1924 Amendment had never been adopted. Richland's article remains current after fifty years and is still the clearest statement that has been written of the history of the home rule enigma in New York State.

Just before becoming Corporation Counsel, Richland served from 1973 to 1975 as the General Counsel to the State appointed Charter Revision Commission chaired by Senator Roy M. Goodman. The Commission was notable for the large number of studies it produced and the successful ratification by the voters of many important Charter amendments. Among these were the creation of the Mayor's Management Report, the addition of many budget, expenditure, and audit controls, including a prohibition against the mayor voting on the budget, increased community and borough participation in planning and budget adoption, and the establishment of the Uniform Land Use Rules and Procedures.

On January 15, 1975, Mayor Abraham D. Beame, calling Richland a long-time friend and colleague, appointed Richland as Corporation Counsel. Richland was sixty-five years old at the time and replaced Adrian P. Burke, a former Court of Appeals Judge who had served as Corporation Counsel during the first year of the Beame Administration. In a *Man in the News* profile in *The New*

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8. W. Bernard Richland, *Constitutional City Home in New York*, 54 COLUM. L. REV. 311 (1954); 55 COLUM. L. REV. 598 (1955).

9. *Adler v. Deegan*, 167 N.E. 705 (N.Y. 1929) (upholding the state-enacted Multiple Dwelling Law which was applicable only to New York City); *Robertson v. Zimmermann*, 196 N.E. 740 (N.Y. 1935) (upholding a state statute creating a sewer authority for Buffalo).



*York Times* the day after his appointment, Richland stated that he had first met Mayor Beame when Beame joined City government as an Assistant Budget Director and that Richland had quickly become Beame's counsel at the Law Department, a role that Richland said he continued to play even after Richland left City government in 1958. Richland served as Beame's Corporation Counsel until the Koch Administration took over on January 1, 1978 when a new Corporation Counsel, Allen G. Schwartz, was appointed.

Important aspects of Richland's term as Corporation Counsel are described by Judge Nina Gershon in her contribution to this issue, particularly the great litigation over Grand Central Terminal that saved both the Terminal and the city's landmark preservation law. That was only one of many significant cases litigated during Richland's three years. The Law Department litigated dozens of cases brought by bond holders, unions, welfare recipients, teachers, students and other special pleaders, each of whom argued that they had a legal reason why they should be spared from the impact of the fiscal crisis and adverse budget cutbacks. In perhaps the most important of these cases, Richland unsuccessfully attempted to uphold a key element in the State's efforts to assist the city.

On November 14, 1975, at the height of the fiscal crisis,<sup>10</sup> the State Legislature enacted an emergency three-year moratorium prohibiting New York City noteholders from suing the City for their principal and interest. The act gave the noteholders the choice of holding their notes past maturity and receiving six percent interest or exchanging the notes for Municipal Assistance Corporation bonds.<sup>11</sup> The Flushing National Bank refused to accept the offer and asked the court to compel payment. The city resisted. Richland's brief to the Court of Appeals compared the moratorium's relatively benign impact on noteholders to the harsher efforts the city had taken with respect to others. Richland recited that the city had raised real property taxes, imposed a wage freeze, reduced city employees by 48,000, halted all new construction projects, suspended work on forty-six other projects, disbanded eight fire companies, and closed seven schools and a municipal hospital. The

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10. For a description of the New York fiscal crisis see 48 N.Y.L. SCH. L. REV. 417 (2004).

11. NY UNCONSOL. § 1 (2003).

Court of Appeals nonetheless reversed the lower courts which had upheld the moratorium.<sup>12</sup> In a much-cited opinion, the Court ruled that the moratorium violated the “faith and credit” clause of the State constitution.<sup>13</sup> Chief Judge Charles D. Breitel wrote that full faith and credit does not mean that the city should pay except when “inconvenient.”<sup>14</sup> He wrote that “to interpret the constitutional provision otherwise would be to honor it as a form of window-dressing but to deny it substantive significance. . . .”<sup>15</sup> Despite the adverse decision, the city’s fiscal situation was saved when the trustees of the city’s retirement systems agreed to invest approximately \$2.5 billion from pension funds in the city and Municipal Assistance Corporation (“MAC”) obligations.

It was during this period that I and my New York Law School colleague Professor David Schoenbrod litigated another fiscal crisis case against the city. This one involved the 1975 transit fare hike from \$.35 to \$.50 that the state had compelled the city to accept. At the time, Schoenbrod and I were both senior attorneys in the New York City office of the Natural Resources Defense Council working to improve New York City’s subways and buses, and in that capacity represented Friends of the Earth and other local environmental organizations.

In 1975, New York City had one of the worst air pollution ratings in the country, primarily because of exhaust from cars and trucks. Our legal claim was based on an inch-thick, federally-required transportation control plan signed in 1973 by Governor Nelson Rockefeller and Mayor John V. Lindsay. A key strategy in the plan was placing bridge tolls on the city’s bridges as a way to raise money for subways and buses.

Schoenbrod and I asked the federal court in Manhattan, in a case called *Friends of the Earth v. Carey*,<sup>16</sup> to void the subway fare increase and enforce the transportation control plan with its bridge

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12. *Flushing Nat’l Bank v. Municipal Assistance Corp.*, 358 N.E.2d 848 (N.Y. 1976).

13. *Id.*

14. *Id.* at 855.

15. *Id.* at 854.

16. *Friends of the Earth v. Carey*, 401 F. Supp. 1386 (S.D.N.Y. 1975), *rev’d*, 535 F.2d 165 (2d Cir. 1976), *remanded* 422 F. Supp. 638 (S.D.N.Y. 1976), *vacated and mandatory injunction issued*, 552 F.2d 25 (2d Cir.), *stay denied sub. nom.* *Beame v. Friends of the Earth*, 434 U.S. 1310 (Marshall, J.), *cert. denied*, 434 U.S. 902 (1977).

toll strategy to raise funds for public transit. Judge Kevin Thomas Duffy in the district court denied our motion, but the law as passed by Congress was with us and we won a unanimous reversal in the Second Circuit. Judge Walter Mansfield wrote for the three-judge panel that while the transit fare was not subject to the Clean Air Act, the federal obligation to reduce air pollution was, and the city was obligated to implement all of the strategies in the plan to reduce carbon monoxide including bridge tolls.

When the case returned to Judge Duffy, Alex Gigante, the Assistant Corporation Counsel who was handling the case, informed us, with surprise in his voice, that Richland would personally argue the case. This was unusual and we knew it. The case had generated substantial media coverage and headlines, especially about bridge tolls. There had been praise from *The New York Times*, but there were also howls from the business community and from the Beame Administration which feared that if bridge tolls were to be implemented, the result would be fewer cars and customers coming to Manhattan, and a worsening of the fiscal crisis.

On the day of the argument, Richland appeared as promised. Anyone who had argued against Richland in court could never forget the performance. He was very formal in his presentation—a formality which was emphasized by his pronunciation and distinctive accent which just seemed old fashion to me at the time, but which I now know was a residue of his Liverpool upbringing. In a powerful voice he repeatedly called Abraham Beame “my mayor” as in “my mayor does not object to achieving air quality standards, but my mayor should not be compelled to take these draconian steps.” It sounded like he was delivering a message rather than making a legal argument.

The most memorable part of the argument on that occasion occurred in Richland’s peroration. He asked, “Who are these Friends of the Earth? Am I not also a friend of the earth? Are the rest of us enemies of the earth?” He then asked whether the court was to “enforce the order come hell or high water. Are we seeing the last vestige of the Federal Attitude towards New York City that was so aptly described in the *Daily News* headline, ‘New York City - Drop Dead’?”

Judge Duffy again sided with Richland, but Schoenbrod and I won a second decision in the Court of Appeals reversing Judge Duffy. Richland then applied to Justice Thurgood Marshall for a rare stay of the Court of Appeals order pending consideration by the Supreme Court of a City petition for certiorari. Richland, Schoenbrod, and I went down to Washington, D.C. to argue the motion, which Justice Marshall asked be held in his chambers in the Supreme Court building. Justice Marshall had us sit in a circle in his office on couches and chairs and he conducted an informal, relaxed conference on the motion which caught Richland, Schoenbrod, and me off guard. Richland orated about the difficulties his mayor faced, Schoenbrod and I lectured about the law, while Justice Marshall interjected humorous observations. When he had heard enough, Justice Marshall dismissed us saying that he would read our papers. A few weeks later Justice Marshall refused the stay, but by that time Congress had passed the 1977 Amendments to the Clean Air Act which made the bridge toll strategy unenforceable. Ultimately, the Friends of the Earth plaintiffs settled for a more modest decree without tolls. Richland had, by persistent litigation, succeeded in delaying and then moderating the harshest of the Clean Air Act strategies at the price of consenting to implement more realistic substitute strategies.

Richland, on April 21, 1977, as he was preparing his Supreme Court petition, gave a talk on the *Friends of the Earth* case at a Forum for Business and Labor held in the historic Great Hall of the New York Chamber of Commerce and Industry at 65 Liberty Street. The last paragraphs of his talk present a good sample of his ability to write clear and hard hitting argument:

These consequences [of tolls] are all so obvious to anyone who knows our [c]ity, has traveled its highways, and used the Harlem and East River Bridges, that I am driven to the conclusion that those who would cause this mischief are from out of town, perhaps from other lands, maybe from another planet. They know as much about the Harlem River as they know about the River Styx. I don't know what air they breathe, but they seem to be under the illusion that we here in New York are at the point of asphyxiation and that the abolition of the automobile is essential to our survival.

There is a mindless quality to all this which seems to have infected otherwise rational people. Learned judges subscribe to this foolishness and the *New York Times* editorial page solemnly proclaims: "Tolls are Acceptable: The Air is Not." And we City officials, trying to work our town out of a fiscal crisis, added to law enforcement crisis, face still another crisis — one not less serious because it confounds common sense and defies reason: the zealotry of the environmentalists.<sup>17</sup>

Not long after Richland retired as Corporation Counsel he began a close relationship with New York Law School. In November 1978, Richland, then counsel to the Park Avenue law firm of Botein, Hays, Skar & Herzberg, wrote to Dean E. Donald Shapiro suggesting that New York Law School establish a local government law institute. Richland pointed out that, in general, law school curricula neglected local government law or included courses that differed little from graduate political science courses, and that the national organizations which worked on local law issues, such as the United States Conference of Mayors, were neither neutral nor scholarly. Dean Shapiro responded enthusiastically and the upshot was that Richland became an Adjunct Professor at New York Law School where he taught a two-credit course in local government law and litigation beginning in the fall of 1979.

In 1980, in his second year of teaching at New York Law School, Richland published a book on how to deal with local government. The title of the book tells it all: *You Can Beat City Hall: Everything You Need to Know to Sue Your City, Town, County or Village – and Collect*.<sup>18</sup> To write the book, Richland relied on his years of defending the city and his subsequent experiences when he switched sides to the private bar. The book is laced with wonderful stories of successful and unsuccessful plaintiffs, some famous and others more pedestrian, literally pedestrian—as in cases involving persons

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17. Copy of remarks in the files of the Center for New York City Law at New York Law School. Richland made a similar attack on the federal bridge toll obligation in the speech in this issue at W. Bernard Richland, *Address of W. Bernard Richland, Corporation Council of the City of New York, Before the National Institute of Municipal Law Officers and World Conference on Law at Washington, D.C. October 15, 1975*, 48 N.Y.L. SCH. L. REV. 421 (2004).

18. BERNHARD W. RICHLAND, *YOU CAN BEAT CITY HALL: EVERYTHING YOU NEED TO KNOW TO SUE YOUR CITY, TOWN, COUNTY OR VILLAGE – AND COLLECT* (1980).

injured in sidewalk trips and falls. For example, Richland wrote of the young man who was injured while roller skating on a city sidewalk and sued the city. His complaint was thrown out by a judge friendly to the city who ruled that sidewalks were not for skating. But, cautioned Richland, other judges might not be so restrictive on the appropriate use of sidewalks.

The release of Richland's book in 1980 and the novelty of Richland's law course at New York Law School caused a writer for *The New Yorker* Talk of the Town to visit Richland's class.<sup>19</sup> The writer described Richland as "slightly taller than Abe Beame [with] a neat white mustache, thick gray eyebrows, light-blue eyes, prominent ears, and a direct pedagogical manner."<sup>20</sup> The discussion in the class concerned the prior notice requirement which, anomalously, requires that the city receive notice of a pothole 15 days *before* an accident has occurred as a precondition to being sued. The theory is that without notice the City is not at fault for not having fixed the pothole. In discussing this rule, Richland spelled out a complicated hypothetical. An out-of-town visitor, he said, happens to be walking along Eighth Avenue when a passing truck hits a pothole, jarring loose a nearby traffic-signal light, which falls and injures the out-of-town visitor. Richland posed this question to the class: assuming that the visitor had not sent a prior written notice to the city reporting the pothole fifteen days prior to the accident, how could the visitor successfully sue the city for damages? When one student suggested that the visitor might send a notice and then claim that the accident happened fifteen days earlier, Richland responded with a laugh: "You remind me of the story," he said, "of the poor dumb Brooklyn cop who found a dead horse on Kosciusko Street and couldn't spell 'Kosciusko,' so he dragged the horse six blocks to Gates Avenue."<sup>21</sup>

While attending to Richland's apartment after his death, his daughter, Robin Silverton, allowed me to take some papers and books from Richland's library. Among the papers were four years of student evaluations of Richland's New York Law School course dating from 1981 to 1984. The students wrote uniformly laudatory

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19. *Mischief*, THE NEW YORKER, Sept. 15, 1980, at 37.

20. *Id.*

21. *Id.*

comments on all aspects of the course, with one student saying that Richland was the only professor who stimulated him to do extra work not required by the course.

Richland in 1989 was again called by a mayor, this time Edward I. Koch, to serve as a member of the most important Charter Revision Commission since the 1898 consolidation of New York City. The new Charter Revision Commission became necessary after the U.S. Supreme Court in 1989 ruled that the voting scheme of the Board of Estimate, the most powerful of the city's legislative bodies, was unconstitutional.<sup>22</sup> The Board of Estimate's voting scheme had given the Mayor, Council President, and Comptroller each two votes, and one vote to each of the five Borough Presidents. Constitutional infirmity lay in the violation of the rule of one person, one vote.<sup>23</sup> The Staten Island Borough President representing less than 400,000 people had the same voting strength on the Board of Estimate as the Brooklyn Borough President who represented over two million people.

The Charter Revision Commission's deliberations during the spring and early summer of 1989 pivoted on whether to retain the Board of Estimate in order to allow its five Borough Presidents to continue to vote on the budget and other issues, or whether to dismantle the Board and redistribute its powers. Richland alone of the fifteen commissioners wanted to save the Board of Estimate. He passionately advocated weighted voting as the way to salvage the historic roles of the Borough Presidents.<sup>24</sup> The Commission examined many weighted voting schemes, but none worked politically given the huge disparities in population, nor could they withstand constitutional scrutiny. Richland challenged these conclusions, attacking the plan to replace the Board of Estimate as "an elaborate, complex, expensive, paper-generating, process-multiplying, labor intensive, jerry-built scheme, upsetting an established pattern of government for New York City and vastly diminishing the political

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22. *Bd. of Estimate v. Morris*, 489 U.S. 688 (1989).

23. U.S. CONST. amend XIV.

24. See Frederick A.O. Schwarz, Jr. & Eric Lane, *The Policy and Politics of Charter Making: The Story of New York City's 1989 Charter*, 42 N.Y.L. SCH. L. REV. 723 (1998).

power of minorities. . . .”<sup>25</sup> He continued that the “effect of this distribution of the powers of the Board of Estimate is, in effect, to render insignificant the Borough Presidents, diminish their status to a very considerable extent, and occupy their time for the most part with powerless ‘busy-work.’”<sup>26</sup>

In the public meeting before the Commission voted, Richland promised that he would continue to argue in favor of saving the Board “because this is my city, and I’m concerned about my city, and I believe, in my heart, that you cannot have a viable decent city government without the Board of Estimate or the equivalent of the Board of Estimate, and that weighted voting can happen and should happen, and that the Supreme Court has indicated that.”<sup>27</sup> Time, however, proved Richland wrong on both counts. City government survived and has been reasonably well governed without the Board of Estimate, and a federal court, four years after Richland’s comments, ruled unconstitutional the weighted voting in Nassau County, the model on which Richland had based his argument.<sup>28</sup> His prediction proved more accurate with respect to the Borough Presidents, however, who did indeed emerge from the 1989 Charter change with far less power and authority than they enjoyed when they participated directly through the Board of Estimate in city-wide affairs.

Richland did not start the local government institute that he dreamed of when he first contacted Dean Shapiro, but after New York Law School successfully launched the Center for New York City Law in 1993, Richland liked the idea and contributed many significant volumes from his personal library to the Center’s library. Among the books was a rare volume containing each of the pre-revolutionary charters of the City of New York beginning with the first Dutch Charter in 1624, a bound volume of opinions by the Corporation Counsel, and a transcript of one of Seabury’s hearings.

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25. Dissenting Report by Commissioner W. Bernard Richland, Aug. 10, 1989. *Pros and Cons of the Board Estimate*, N.Y.L.J., Aug. 23, 1989 at 2 (providing excerpts of Commissioner W. Bernard Richland’s dissenting report of Aug. 10, 1989).

26. *Id.*

27. 1989 Charter Revision Commission, Public Meeting, Apr. 24, 1989, transcript at 93.

28. *Jackson v. Nassau County Bd. Of Supervisors*, 818 F. Supp. 509 (E.D.N.Y. 1993).



My wife Alice and I visited Richland at his apartment to talk about the Center. He lived in a generous five room apartment on the 28th floor at 75 Henry Street, Brooklyn, and had dazzling views of the harbor and the skyline of Manhattan from the apartment's terrace. Richland's personal library occupied three walls of his study and overflowed to the other rooms. He served tea in a style that carried over from his Liverpool days.

Richland throughout his life possessed strong patriotic feelings for his adopted country. In his autobiography he emphasized an incident from the 1920s shortly after his arrival in New York City. While on a Brooklyn bus he happened to sit next to a woman who recognized his Liverpool accent. Cornering him, she lectured that "I don't know whether you are Protestant Orange or Irish Catholic, it makes no difference in this country; we all get to be American citizens. So, forget the stupid hatred you were taught from the cradle on. I was just like you. I am Irish Catholic from Belfast and couldn't bear the sight or sound or smell of the Orange Lodge. Now my neighbor and best friend is Belfast Protestant and we get along fine and we both went together to get our first papers and in two years each of us will be just as much an American as George Washington." Richland, writing in the 1990s, explained that this incident confirmed his view that the enthusiasm for attaining United States citizenship had a "greater effect for wiping out historic ethnic hatred and exclusivity than any kind of peace treaty between rival cultures, nations and sects."

After Richland's passing on August 14, 2003, his family continued his generosity to New York Law School and the Center for New York City Law by donating to the Center's library additional books and papers of interest to lawyers and scholars. Through these books and papers, and by his example, W. Bernard Richland's passion for law, government and his adopted city will continue.