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## The Honorable Nina Gershon, United States District Court for the Eastern District of New York

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## A REMINISCENCE OF W. BERNARD RICHLAND AS CORPORATION COUNSEL

THE HONORABLE NINA GERSHON\*

What a treat it has been to pursue my “assignment” – capturing the spirit of Bernie Richland as Corporation Counsel.<sup>1</sup> First, the chronology. Bernie became Corporation Counsel of the City of New York, that is, head of the city’s Law Department, in January 1975. He replaced Adrian P. Burke, a former New York Court of Appeals Judge who had served Mayor Abraham Beame for the first year of the Mayor’s term. Bernie continued to serve through the end of 1977, when the Beame Administration gave way to the Koch Administration.

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\* U.S. District Judge for the Eastern District of New York.

1. My time in the Corporation Counsel’s office began as an Assistant Corporation Counsel in the Appeals Division under Mayor John Lindsay and Corporation Counsel J. Lee Rankin in 1968 and continued, with a one year interruption during 1969-70, until August of 1976. (It was, in fact, Bernie Richland, not then in the Law Department, who recommended it to me as a fine place for a young lawyer to gain experience and serve the public. In particular, he wanted me to work in the Appeals Division under the late, legendary Appeals Division Chief Stanley Buchsbaum. I was reluctant at first, picturing the offices as filled with elderly men in green eyeshades and sleeve protectors. Interviewing with Stanley and meeting the other members of the staff made me moderate my childish view and recognize what an opportunity I had to work with excellent, seasoned lawyers, some of whom had first come to the city during the Depression. Green eyeshades or not, they had so much talent and were willing to share what they knew.) Thus, I only overlapped with Bernie for the period from the start of his tenure in early 1975 until August of 1976.

My sense of him in those early days has been confirmed, however, by my conversations with the following individuals with whom I have recently reminisced about him: Michael Ambrosio, then an Assistant Corporation Counsel in the Appeals Division and now an Acting Justice of the Supreme Court of the State of New York; Jeffery D. Friedlander, then an Assistant Corporation Counsel in the Opinions and Legislation Division and now First Assistant Corporation Counsel; James G. Greilsheimer, then Litigating Assistant Corporation Counsel and now a partner at Blank Rome LLP; Leonard Koerner, then an Assistant Corporation Counsel in the Appeals Division and now Chief Assistant and Chief of the Appeals Division; L. Kevin Sheridan, then Chief of the Appeals Division and now of counsel to Devitt, Spellman, Barrett, Callahan & Kenney, LLP; and Edith Spivack, then Executive Assistant Corporation Counsel and now continuing to share her wisdom with the Law Department as Executive Assistant Emerita. It is because of those conversations that I call the preparation of this piece a treat.

When Bernie began as Corporation Counsel, the city was already in the midst of what was called the “fiscal crisis,” but that term does not begin to describe the devastation facing the city and its people. Every agency, every service upon which people counted, was subject to extreme cuts. The Law Department, faced with innumerable lawsuits and legal issues arising out of the crisis, was itself, in Bernie’s word, “decimated” by the cuts. Bernie justly prided himself on his knowledge of municipal law, but he was confronted with new, previously unimaginable problems. There he was, so devoted to bringing in, and retaining, young lawyers to perform public service for the city, faced with the Law Department’s own shrinking budget, causing cuts from over 400 lawyers (with a need documented by his predecessor for 80 more) to 315 lawyers.

In addition to the hundreds of lawsuits challenging the city’s efforts to deal with the fiscal crisis, including its moratorium on debt repayment, its layoffs of employees, its cancellation of 61 construction contracts, and its cutting of city services, the Law Department was involved with the loans and fiscal oversight agencies which were created to speed the city’s recovery. Implementation of a new City Charter, approved in 1975, was also on Bernie’s agenda.

Bernie faced the additional legal work, as well as the usual complement of legal issues and lawsuits in the Law Department, with realism and pragmatism, but also with exuberant energy and optimism. He knew how bad things were, but he didn’t hide out in what we called “the front office.” Bernie was direct; he got right to the point, and he was impatient with those who did not. He was fearless and proud of the city and those who labored in its vineyards. He, quite literally, bounded down the hallways of the Municipal Building, wiry and full of wit and good humor, encouraging and supporting the Law Department staff and exuding his love for, and loyalty to, his adopted city. He took the time to write notes to lawyers complimenting them on particularly fine work, and when he did this, it was because he himself had read the brief he praised.

It was tremendously gratifying to get that feedback from the Corporation Counsel himself, especially since he was a scholar of municipal law, indeed the preeminent scholar of municipal home rule in New York. He had a keen mind; he knew the law. He had

served the public in so many capacities – as outlined in other articles in this issue.

He was not only a litigator. He had a profound understanding of the local legislative process and its relationship to litigation. To take a small example, but one that I can write about from personal knowledge, he helped me to overcome my lack of enthusiasm about pressing to the New York Court of Appeals an appeal in a case challenging New York City's pinball regulations, *Matter of Albert Simon, Inc. v. Myerson*, 36 N.Y. 2d 300 (1975). Bernie regaled me with the story of how, in an earlier incarnation as an Assistant Corporation Counsel, he and other young lawyers in the Law Department had helped draft the declaration of legislative purpose which had supported prohibition not only of gambling devices but also of other games of chance which could be put to gambling purposes.<sup>2</sup> At the time of the *Simon* case, when serious crime was rampant in the city, it was difficult to get excited about defending a prohibition of pinball machines. But Bernie made his point: The municipal legislation was reasonably related to the proper governmental purpose of preventing the perceived evils of gambling, and it was the legislature's views and not mine that mattered. The Court of Appeals, quoting at length from the tear-inducing prose (of which Bernie was so proud) of the declaration of legislative purpose incorporated in the ordinance (e.g., "in many instances children have squandered lunch, carfare and earnings needed to supplement the family income on such devices, and have even committed thefts to obtain money with which to play such devices," 36 N.Y. 2d at 302-03), upheld the regulations unanimously.

One of the bright spots for Bernie during his tenure as Corporation Counsel was the city's victory in the Grand Central Terminal case, which upheld the city's landmark designation of the Terminal against constitutional challenges.<sup>3</sup> There were some in the preservation community who questioned the city's resolve to pursue, through appeal, the fight to preserve Grand Central Terminal as a landmark, after a devastating loss in the trial court, which had not

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2. Bernie first became an Assistant Corporation Counsel in 1943; he founded the Opinions and Legislation Division (now the Legal Counsel Division) in 1947; and he served in the Law Department until 1958.

3. *Penn Central Transp. Co. v. City of New York*, 50 A.D. 2d 265 (1st Dept, 1976), *affd.* 42 NY2d 324 (1977), *affd.* 438 U.S. 104 (1978).

only rejected, with derision, the findings of the Landmarks Preservation Commission regarding the significance of the Terminal but found that the designation of the Terminal as a landmark was unconstitutional; ominously, the trial court had also severed and kept open the request for damages for a “temporary taking.” But when Bernie became convinced of the merit of the city’s position, he did not stint in his support of the appeal.

I will never forget the day he came to my office (I was then Chief of Federal Appeals) and told me he was assigning the appeal to me. With his eyes twinkling, he indicated he knew it would be tough to win, but told me to give it everything I had. I am sure he pumped his arm in the air as he said this. Despite the limitations on the city’s resources at that time, and the recognition that the case would be protracted, he gave me all of the time and resources that I needed. For example, the brief to the Appellate Division was long, far longer than any brief I had written before, and one of Bernie’s cost-saving initiatives had been to eliminate the printing of briefs in favor of in-house binding of typewritten briefs. Nonetheless, he authorized the printing of the city’s brief in the Grand Central case to deal with its length and assure its readability by the Justices of the Appellate Division.

The victory in the Appellate Division came in December 1975, and I was no longer in the Law Department when the time came to defend the victory in the Court of Appeals. Bernie, with his special ability to recognize talent and his lack of concern for titles, assigned the appeal to the extraordinarily gifted, but relatively young Lenny Koerner, now Chief Assistant Corporation Counsel and Chief of the Appeals Division. The proof of the wisdom of Bernie’s choice came when the New York Court of Appeals affirmed the decision unanimously in 1977. (The late Allen Schwartz, who succeeded Bernie Richland as Corporation Counsel in 1978, and who, at the time of his death was a United States District Judge for the Southern District of New York, exhibiting the same belief in talent rather than titles, assigned Lenny to argue the case in the Supreme Court. The result, of course, was a sweeping victory for landmarks preservation.)

As part of his commitment to the advancement of lawyers in public service, Bernie Richland had, what in those days was unusual

in either private or even public law practice, a commitment to women lawyers, whom he respected as individuals, without patronization or the requirement that women conform to a particular mold. In addition to assigning to me the greatest case that I had as a lawyer, in November 1975 he appointed me Chief of the Law Department's Consumer Protection Division. Without fanfare, without patting himself on the back for doing so, he treated women lawyers with respect and confidence. Only now, looking back, do I fully appreciate the remarkable nature of his support for women in the profession.

I shared only a brief time with Bernie Richland at the Corporation Counsel's office, but, as he was to so many others, he was coach, inspiration, support. He encouraged young lawyers to seek government service. In now reading the letter which Bernie wrote on June 28, 1976 to Mayor Beame, in submitting the Law Department's Management Plan for Fiscal 1977, I was moved to see it filled with pleas for more resources for the Law Department and for the "bright young lawyers" he thought could help the city in its times of trouble ("It is vital to the city's interests that bright young lawyers be encouraged to stay in our Government. . ."). He wanted both to support young lawyers in their quest for public service and to help the city, and he saw the convergence of these two goals. The legacy which I treasure from his years as Corporation Counsel was his humane and supportive treatment of his staff under the most trying of circumstances and his boundless belief, so exemplified in his own life's work, in the value of public service.