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Reflections on the New York City Law Department

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EDWARD I. KOCH

Reflections on the New York City Law Department

ABOUT THE AUTHOR: Edward Koch was a United States Congressman from 1969–1977 and Mayor of New York City from 1978–1989.

Those who have worked with me in and out of government know all too well my fundamental belief that “[p]ublic service is the noblest of professions, if done honestly and done well.”¹ No one personified this maxim better than my friend, the distinguished former Corporation Counsel, Allen Schwartz.² As Professor William E. Nelson wrote in the acknowledgements to his book:

Allen Schwartz, to whom this book is rightly dedicated, demonstrates how much a smart and dedicated lawyer can do to change the profession and the world and to make them better. He offers a role model to which all of us can aspire. Our city owes more to him than it has ever realized and our nation—indeed the world—badly needs more lawyers and public servants like him.³

When I became New York City’s 105th mayor in 1978, I entered a whole new world of responsibility. I am not, for better or worse, a *humble* person. I am confident in my own worth and always have been. But I knew if I were to succeed in preventing New York City from descending into bankruptcy, I would have to put together the strongest mayoral team that had ever governed the city. The two agencies on the front lines of protecting the city during the fiscal crisis were the Law Department and the Office of Management and Budget (“OMB”). Each required a very special and trusted leader. For the former, I recruited my former law partner and close friend, Allen Schwartz. For the latter, I chose Jim Brigham.

As my law partner, I had seen Allen in action. He was one of the best trial lawyers in the city, and even more, a brilliant administrator. The Law Department needed radical reform. It was in disarray after decades of under-funding and city hall neglect.

He was the right man at the right moment: a brilliant lawyer, a fearless leader, and a relentless advocate for the city of New York. Allen demonstrated those qualities every day of his professional life. He was totally prepared to take on not only the outside world that was seeking to devour us, but also the inside, entrenched world of the city’s Law Department. Reform is not a descriptive enough term for what he really accomplished. He took over an office that had been decimated, both through firings as well as political patronage hirings. Incredibly, there were even some city lawyers who at the time were allowed to “moonlight” and have private law practices.

Allen would have none of it. He moved quickly and decisively to change the office. Making the department more professional and hiring truly merit-based was no simple task. Allen and some former colleagues had to secure these reforms through litigation and negotiation. He had to convince the Civil Service Commission, as well as fight with the Teamsters, to secure the right to hire on a merit-based selection system in lieu of the previous civil service requirements. This enabled the Department to attract graduates from many of the top law schools in the country.

In the case of the OMB, its leader had to be respected and trusted, not only on Wall Street and in the financial community across the country, but especially by my

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1. EDWARD I. KOCH & CHRISTY HEADY, *BUZZ: HOW TO CREATE IT AND WIN WITH IT* 14 (2007).
 2. Allen Schwartz was Corporation Counsel from 1978 to 1981. Prior to that, he was a partner at Koch, Lankenau, Schwartz and Kovner, and subsequently, Schwartz, Klink & Schreiber.
 3. WILLIAM E. NELSON, *FIGHTING FOR THE CITY: A HISTORY OF THE NEW YORK CITY CORPORATION COUNSEL* (2008).

former colleagues in Congress. This type of leader was essential if we were to get the legislation proposed by Felix Rohatyn, known as the Federal Loan Guarantees, passed.⁴ Most important, the head of the OMB had to have and convey credibility in defining the city's financial condition. I would always be his toughest critic. I chose Jim Brigham, who came from St. Louis, Missouri. His mid-western style and cadence were different from what you generally hear in New York, and his private sector credentials were absolutely impeccable.⁵ He could hold his own with the best of them. Like Allen, he was the right man at the right moment for the city.

Let's not forget that Allen also found many superb lawyers in the Law Department when he got there. I had the good fortune to know quite a few of them. I stole some, too. Pat Mulhearn followed by Rick Schaffer (who arrived after Allen took over) served me well as counsel to the mayor. Dean Silverberg and Susan Rosenberg were deputies in that office as well. All of them were supported by a distinguished set of bureau chiefs at the Corporation Counsel. The late Edith Spivack, Doran Gopstein, Jim Greilsheimer, Hadley Gold, Lorna Goodman, Steve Kramer, and Paul Rephen all played key leadership roles during those years. And I drew from the Corporation Counsel talent to run agencies when I needed people who were superb administrators, like Joe Bruno in the Parking Violations Bureau and Fire Department or Judy Levitt at Personnel.

Of all these people, I don't think anyone has served this city with more loyalty or greater distinction in the Law Department over the past four decades than either Len Koerner or Jeff Friedlander. Len has appeared in the Supreme Court more often than anyone I know other than the justices themselves. Jeff, now First Assistant Corporation Counsel, has almost completely redefined the City Charter during that time.

Allen recognized, respected, and mentored many of the distinguished lawyers I have mentioned. His appointments were made solely on merit, and everyone knew that.

Allen knew that one of the most important areas of responsibility for the Corporation Counsel would be dealing with the city's financial affairs. Much of that work had been done in prior years by hiring outside counsel and experts. He decided to build an "in-office" expertise creating a division devoted to economic development, fiscal, and security matters. He was also determined to become an expert himself so that he could advise me on such matters. Allen knew how important his and his deputies' expertise would be to me. I was suddenly in charge of an operating budget of about \$13 billion and a near non-existent capital budget of about \$350 million. The person he personally relied on and who he often brought to my office at city hall was Sandy Altman. He always brought the best and the brightest regardless of rank. His sole criterion was who was most conversant with the issues at hand.

4. *See Testimony on an Infrastructure Investment Bank: Testimony Before the S. Banking Comm.*, 110th Cong. (2008) (statement of Felix G. Rohatyn, Ambassador, Center for Strategic and International).

5. Jim Brigham began his career at JPMorgan & Company in mergers and acquisitions from 1969–1978. He then worked at the OMB from 1978–1981.

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Allen also took head-on the issue of possible corruption. Allen's words to lawyers in the department were recorded in an oral history after I left office:

On the very first week I became Corporation Counsel, I had every division separately in meetings. When I got the Tort Division, I said to them that over the years, I heard stories about things that went on in the Law Department that were, to put it mildly, not only not correct, but illegal. And I said, "I'm going to tell you something. You don't know me, and none of us ever met before. But I started out as an assistant district attorney. I was very active in the District Attorney's Association. I know every district attorney in New York, all five of them, personally on a first name basis. Some of them are very good friends of mine, and I'm promising you that the day there's an accusation, the district attorney's office will be in the courtroom making sure that you are prosecuted, that you are convicted, and that you go to prison." I said, "I'm promising you that. You have my word of honor." And I said, "Don't forget what I've said here today."

The two Corporation Counsel who followed Allen—first, Fritz Schwarz and then Peter Zimroth—will, I hope, tell anyone inquiring that I was a good client in that I listened to and followed their advice. So far as I can recall, I argued with Allen and questioned his advice only once, and even then, I ultimately heeded his guidance, rather than my own instincts on the matter. That advice concerned entering into consent decrees, which we did on the prisons, on the homeless shelters, etc. I said to Allen, "I really don't like these consent agreements on when to paint, how many showers and bathroom fixtures, etc., because we will never get credit for doing what's right on our own. The advocates will always say they forced us to make the changes which we would have done on our own." He replied, "Believe me, if we don't consent, it will be worse." Even though I was wrong and Allen was right in that particular instance, I still think my views on consent decrees are right.

I recall when Allen came into office, thirty years ago in 1978, there were about 5000 default judgments taken against the city because the city simply didn't show up to answer the court calendar. The lawyers had to share telephones, spend their time Xeroxing files, and even on occasion painting their own offices. Allen came to me and said, "Ed, we have to get out of the Municipal Building; it is a pigsty. We need professional, private offices and I've found a building where for less than \$8 a square foot, we can rent the space we need. The landlord will throw in the furniture for no additional cost." I said, "Allen, we will do it." The lease had to be approved by the Board of Estimate. The city comptroller said he favored the lease, but believed it should have a five-year cancellation clause. Allen said that would not be possible under the very favorable terms we were getting in the lease. I said to Jay Goldin in effect, "Jay, I promise you that the city will be in business for the full ten years of the lease so we won't need a right to cancel in five." In the spirit of cooperation, the comptroller withdrew his objection and we entered into the lease. I wonder how much per square foot the city is paying for 100 Church Street today?

Let me say to Professor Nelson that his book, *Fighting for the City*, is a brilliant book. I am very appreciative of his ability to make what some might think, on its

face, to be a dull subject—the history of the Law Department—one of the most exciting stories imaginable. Of course, those of us who served the city in those tumultuous times, have a special appreciation for the story recounted, including those periods that came before our own involvement and those that followed.

A conversation between Jim Bringham, Allen Schwartz, and me—after they had returned to the private sector—comes to mind:

Allen: “The public doesn’t appreciate what public officials do and the sacrifices they make, and rarely does a public official leave office with his reputation intact, and rarer still, with his reputation enhanced.”

Jim: “You are so right, Allen.”

In the case of these two extraordinary men, we all know that their reputations were not only enhanced, but their distinguished service to the city recognized.

On behalf of Allen’s family, Joan and her children, David, Rachel, and Deborah, and for myself, I want to extend my thanks to the current Corporation Counsel, Michael Cardozo, for his passionate leadership on behalf of the Department and, in particular, for taking Professor Nelson’s book from a mere concept to a reality. That wasn’t easy to do. Michael was supported by Jeff Friedlander, Gregg Mashberg, and my close friend and current law partner, Jim Gill, in his efforts. All of you have helped ensure that our friend Allen’s contribution to the history of the Law Department is now well documented.