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"SOMETHING SMELLS FISHY": THE GIULIANI ADMINISTRATION'S EFFORT TO RID THE COMMERCIAL TRADE WASTE COLLECTION INDUSTRY OF ORGANIZED CRIME

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“SOMETHING SMELLS FISHY”:
THE GIULIANI ADMINISTRATION’S EFFORT
TO RID THE COMMERCIAL TRADE WASTE
COLLECTION INDUSTRY OF ORGANIZED CRIME

I. INTRODUCTION

In recent years, New York City politicians and prosecutors joined forces in a fight against the organized crime presence that had become inextricably linked with many of the City’s most lucrative industries. The private waste collection industry (“the industry”) in New York City was one such target, which prosecutors believe had been controlled by the Genovese and Gambino crime families for decades.¹ Historically, numerous small, local businesses dominated the industry, which has had a long history of customer allocation conspiracies in restraining fair trade competition.² These conspiratorial agreements typically have involved members of organized crime families, especially in metropolitan areas.³ In the New York City region, the existence of racketeering involvement in the industry resulted in very limited entry into the market by large national carter companies.⁴ Meanwhile, the local carters treated customers as assets to be bought and sold, and prices for collection of commercial trade waste skyrocketed.⁵ Still, the industry’s reputation for corruption and organized crime involvement precluded customers from taking any action to improve the situation.⁶

During the 1990s, the corrupt history of the industry took a dramatic turn when New York City, under the leadership of Mayor Rudolph

1. See Alexandra Marks, *New York Foils Mob Influence With Rules, Regulations*, CHRISTIAN SCI. MONITOR, June 23, 1997, at 11.

2. See Peter Reuter, *The Cartage Industry in New York*, 18 CRIME & JUST. 149, 149 (1993).

3. See *id.*

4. See *id.*

5. See *id.* at 162. In the late 1970s, public records demonstrated that the anti-competitive practices that arose during the 1950s (and eventually led to regulation) still persisted. The carter businesses “treated [customers] as assets of the carters who serviced them, and they were transferred between carters in open financial transactions that were routinely approved by the Department of Consumer Affairs (DCA), the industry’s regulatory agency.” *Id.* at 159. Although the justification offered for the customer transfers was that the original carter was selling the goodwill that had developed with the customers, “the circumstances surrounding [the] individual transactions, as well as the high and uniform prices paid, made clear that this was a pretense.” *Id.*

6. See *id.* at 149.

Giuliani, vowed to remove the “smell” from the industry.⁷ The City had privatized the industry in 1956, and in 1996—forty years later—“true competition finally arrived in the nation’s largest solid waste market.”⁸ This change largely can be attributed to Local Law 42, enacted in 1996, which created the Trade Waste Commission “to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest” by overseeing the “licensing and regulation of businesses in the carting industry.”⁹ Although the results of the law are commendable, in that organized crime indeed has been extracted from the industry, some Giuliani critics believe that a price has been paid for this accomplishment—namely, the usurping of the civil liberties of the accused.¹⁰

This Note discusses Local Law 42 and some of the issues that surround it. Part II of this Note orients the reader to the background of the law and the reasons for its enactment. Part III describes the law itself, and Part IV discusses the licensing of carters under the law. Part V explores the constitutional challenges to the law and explains how these challenges failed, as the law ultimately withstood judicial scrutiny. Part VI provides one account that praises the law’s effectiveness. Part VII summarizes some of the criticism directed at the law and the mayor whose administration enacted it. Finally, Part VIII briefly discusses other attempts by the Giuliani Administration to rid City businesses of organized crime.

II. BACKGROUND

Throughout New York City’s history, the business of collecting commercial trade waste¹¹ traditionally has been handled by the private

7. See Jerry Adler, *We’ll Take Manhattan*, NEWSWEEK, Aug. 18, 1997, at 32.

8. Steve Daniels, *Competition Comes to New York*, WASTE NEWS, Apr. 21, 1997, at 10.

9. Local Law 42 of 1996, N.Y. COMP. CODES R. & REGS. tit. 42, § 1 (1996).

10. See Richard Cohen, *Safe-Streets Mayor*, WASH. POST, Oct. 28, 1997, at A21.

11. Waste collection is different from waste disposal, and the opportunities for illegal activity in each industry likewise differ. As Peter Reuter explains:

Waste collection (taking garbage from the generator to some other location where it may be recycled, compacted, or disposed of) is not waste disposal (providing a final destination for the waste, typically a landfill before 1980, now increasingly incineration or other more technologically complex transformation). Though some firms may provide both services, the vast majority do not. As

sector.¹² The City's requirement that all commercial establishments hire private carters to haul their refuse can be traced back to the late 1800s.¹³ The only exception to this rule was a brief period during which businesses in residential areas had their garbage collected by the City, free of charge.¹⁴ As of 1956, however, the City mandated that all commercial establishments, regardless of locale, contract with private waste hauling companies for removal and disposal of their garbage.¹⁵ A very lucrative industry arose from this municipal policy.¹⁶

As one might imagine, the corruption that often accompanies the potential for great profit began to permeate the commercial trade waste collection business.¹⁷ During the mid-1950s, various investigations began to reveal the infiltration of organized crime into the industry.¹⁸ In 1957, the United States Senate Select Committee on Improper Activities in the Labor or Management Field, chaired by Senator John McClellan, conducted hearings on the industry in the metropolitan New York area.¹⁹ At the time of the investigation, the industry earned approximately \$50 million annually, servicing approximately 122,000 businesses and 500,000 private homeowners.²⁰ According to the record of these hearings, the investigation sought to reveal that organized crime indeed had seeped into

environmental concerns have become increasingly important, disposal is now usually either directly provided by local government or operated under contract to such a government, reflecting the government's interest in having control of the waste stream.

The opportunities for illegal activity in the two sectors are very different. Local disposal markets are often monopolies, either natural (a uniquely advantaged site in a congested area) or regulatory (only one license granted for environmental reasons). Control of a disposal facility by a group of "carters" (the term used here for the firms that collect solid waste) was one means for limiting entry and competition in earlier eras; only carters who were in compliance with a cartel agreement were allowed to bring their waste to a given facility. Collection generates cartels rather than monopolies.

Reuter, *supra* note 2, at 151-52.

12. *See* Sanitation and Recycling Indus., Inc. v. City of New York, 107 F.3d 985, 990 (2d Cir. 1997).

13. *See id.*

14. *See id.* The City eliminated this exception in 1956.

15. *See id.*

16. *See id.* ("Three hundred private carting companies service 250,000 commercial accounts, removing more than 12,000 tons of commercial waste and recyclable materials each day."). *Id.*

17. *See id.*

18. *See* ALAN A. BLOCK, PERSPECTIVES ON ORGANIZING CRIME 82 (1991).

19. *See id.*

20. *See id.*

the industry and was constructing "business empires in the private carting industry through a system of monopoly enforced by trade associations and cooperative labor unions."²¹ After the hearings, Senator McClellan concluded that "more than 46 hoodlums were found connected in one way or another with the carting industry."²²

The carter businesses involved were either sole proprietorships or partnerships, and all were members of Local 813 of the Teamsters union, the union that represented the carters.²³ The McClellan hearings led to the indictments of Vincent Squillante, the principal racketeer directly involved in the industry, and Bernard Adelstein, union president of Local 813.²⁴ However, Squillante disappeared before his trial, and it is believed that he was murdered; Adelstein's conviction in the trial court was overturned on appeal.²⁵ Thus, some believe that the McClellan hearings "did little more than help establish the bad reputation of the industry."²⁶ That was 1957; over time, the corruption continued.²⁷

Nearly thirty years after Senator McClellan's revelations, the situation in the industry had not improved.²⁸ In 1987, the U.S. Department of Justice conducted its own study of racketeering, which again revealed how various private carters bought and sold the rights to service particular customers, while internal disputes were arbitrated by the racketeers themselves.²⁹ This investigation, called the Rand Study,³⁰ also found that business owners frequently had no input in choosing a carter and were forced to pay exceptionally high prices that often were falsely inflated.³¹

In 1986, the New York State Assembly's Environmental Conservation Committee suggested that organized crime had become so intricately linked to the industry that eradicating its presence would require an exceptionally

21. *Id.* at 82-83 (stating that "the hearings focused on the activities of organized crime figures and associates, including Vincent J. Squillante, Bernard Adelstein, Joseph Parisi (who though dead in 1956 was important in the construction of the organized crime conspiracy under investigation), and Nick Ratteni"). *Id.* at 83.

22. *Id.* at 83 (internal quotation marks omitted).

23. *See* Reuter, *supra* note 2, at 158-59.

24. *See id.* at 157.

25. *See id.*

26. *Id.*

27. *See id.* at 86 (stating that "it is certain that the coercive elements in this industry were and remain substantial"). *Id.*

28. *See* Sanitation and Recycling Indus., Inc. v. City of New York, 107 F.3d 985, 990 (2d Cir. 1997).

29. *See id.*

30. *See id.*

31. *See id.*

strict regulatory scheme—much stricter than the regulations in place at the time.³²

A few years later, the committee's suggestion was heard. The New York City Police Department and the Office of the Manhattan District Attorney, Robert Morgenthau, conducted an investigation into the inner workings of the industry.³³ In June 1995, seventeen individuals in the industry were indicted, in addition to twenty-three carting companies and four trade waste associations.³⁴ The allegations ranged from monopolizing the industry and artificially inflating prices, to allocating customers to particular carters and threatening "outside" carters with murder and arson.³⁵ These indictments indicated that the fishy smell of the industry had turned into a stench. In 1996, the year after the indictments, two entities emerged that would attempt to rid this prosperous business of its corruptive elements: the Administration of Mayor Rudolph Giuliani and Local Law 42 of 1996.³⁶

III. LOCAL LAW 42: AN OVERVIEW

On May 22, 1996, the Committee on Consumer Affairs met to discuss the possibility of creating a trade waste commission "to regulate the commercial carting industry in New York City[.]" which "ha[d] been dominated for decades by a cartel, controlled by organized crime, which ha[d] prevented competition among private carters."³⁷ Prior to the proposal, commercial carters had been licensed by the Department of Consumer Affairs³⁸ pursuant to the New York City Administrative Code (the "Code").³⁹

The City Council (the "Council") held three hearings between December 1995 and May 1996 to consider the new proposal.⁴⁰ The hearings confirmed earlier findings of corruption in the industry for over four decades, including the trade waste cartel formed by members of organized crime groups and threats to those outside of such groups who

32. *See id.*

33. *See id.*

34. *See id.*

35. *See id.*

36. *See id.*

37. Report of the Committee on Consumer Affairs, N.Y. CITY LEGIS. ANNUAL, at 208.

38. *See id.* at 210.

39. *See* N.Y. CITY ADMIN. CODE tit. 20, § 18 (1997).

40. *See* Sanitation and Recycling Indus., Inc. v. City of New York, 107 F.3d 985, 990 (2d Cir. 1997).

attempted to enter the industry.⁴¹ The Council recognized that customers were being overcharged as a result of improper rate-making and charging for the removal of quantities of waste that exceeded the amounts actually being collected.⁴² Specifically, Manhattan District Attorney Morgenthau estimated that \$500 million of the revenue generated in the \$1.5 billion-per-year industry had been comprised of cartel overcharges.⁴³ In addition, the Council recognized the unequal bargaining power in contractual relations between customers and cartel members, including the use of "evergreen clauses"⁴⁴ and other onerous provisions. The presence of organized crime in the industry also resulted in frequent criminal activity, such as violence and threats of violence to both customers and competing businesses.⁴⁵ The Council further deemed the "mob tax"⁴⁶ paid by New York City businesses "harmful to the growth and prosperity of the local economy."⁴⁷

These determinations, coupled with the 1995 indictments of cartels and their members, prompted the Council to enact Local Law 42, which was passed on June 3, 1996.⁴⁸ The legislature stated the purpose of the new law as follows: "Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses which utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices."⁴⁹

The law took effect immediately, creating the New York City Trade Waste Commission (the "Commission") to directly oversee the licensing, registration, and regulation of the carters in the City.⁵⁰ As prescribed by the law, the Commission consists of the commissioner of investigation, the

41. *See id.* The proposal was introduced by members of the City Council, namely Council Member Vallone (the speaker); Council Members Fisher, Koslowitz, O'Donovan, Michels, Freed, Malave-Dilan, Henry, Dear, and Eristoff (by the request of the mayor and public advocate); Council Members LeMer, Povman, Abel, Fields, Lasher, and Powell IV were also present. *See* Local Law 42 of 1996, N.Y. COMP. CODES R. & REGS. tit. 42 (1996).

42. *See Sanitation and Recycling Indus., Inc.*, 107 F.3d at 990.

43. *See id.*

44. *See id.* An "evergreen clause" provides for automatic renewal of a contract from term to term. *See Sanitation and Recycling Indus., Inc. v. City of New York*, 928 F. Supp. 407, 411 (S.D.N.Y. 1996).

45. *See Sanitation and Recycling Indus., Inc.*, 928 F. Supp. at 414.

46. *See* Donna Greene, *Hearings Begin on Carting Industry*, N.Y. TIMES, Dec. 14, 1997, Westchester edition, § 14, at 1 (describing "mob tax" as "the added amounts that governments, businesses and individuals have to pay for garbage collection because of organized crime's influence in the carting industry").

47. Local Law 42 of 1996, N.Y. COMP. CODES R. & REGS. tit. 42, § 1 (1996).

48. *See id.*

49. *Id.*

50. *See Sanitation and Recycling Indus., Inc.*, 928 F. Supp. at 410.

commissioner of business services, the commissioner of consumer affairs, the commissioner of sanitation, and one other member who is appointed by the mayor.⁵¹ The powers of the Commission include the ability to establish standards for the issuance of licenses to carters;⁵² to establish minimum and maximum rates for trash removal and disposal;⁵³ to set standards for service, including contracting, billing, and maintenance;⁵⁴ to investigate matters that may arise in the course of its duties;⁵⁵ and to establish programs for the education of customers learning about the industry and their personal rights relating to that area.⁵⁶

IV. CARTER LICENSING UNDER LOCAL LAW 42

Although all of the above duties of the Commission are noteworthy, its control of the licensing process and regulation arguably has caused the most commotion—both among applicants and in the courts.⁵⁷ That portion of the statute makes it illegal for any individual or business to collect commercial waste “without a license therefore from the commission.”⁵⁸ Those carters possessing licenses prior to the enactment of the law have been allowed to continue to possess such licenses until an unspecified date to be set by the Commission.⁵⁹ Should a licensee desire to renew the license within that period, the prior license would remain effective until the Commission renders a decision on the new application.⁶⁰

The Commission not only has the right, but the obligation, to make an informed decision on each application it receives.⁶¹ Under the statute, the Commission may, after given notice and an opportunity to be heard, refuse a license to any applicant who “lacks good character, honesty and integrity.”⁶² The Commission must state the reasons for the denial of a

51. See N.Y. CITY ADMIN. CODE § 16-502 (1997). The Commission is currently headed by attorney Edward Ferguson III. See Paul Moses, *City Putting a Lid on Private Trash Prices*, *NEWSDAY* (N.Y.), Mar. 26, 1997, at A28.

52. See N.Y. CITY ADMIN. CODE § 16-504(a) (1997).

53. See *id.* § 16-504(b).

54. See *id.* § 16-504(d).

55. See *id.* § 16-504(f).

56. See *id.* § 16-504(g).

57. See *Sanitation and Recycling Indus., Inc. v. City of New York*, 928 F. Supp. 407, 410 (S.D.N.Y. 1996).

58. See N.Y. CITY ADMIN. CODE § 16-505 (1997).

59. See Local Law 42 of 1996, N.Y. Comp. Codes R. & Regs. § 14(iii)(a)(2) (1996).

60. See *id.* § 14(iii)(a)(1).

61. See N.Y. CITY ADMIN. CODE § 16-504(a) (1997).

62. See *id.* § 16-509(a).

license.⁶³ The provision goes on to list possible bases for refusing a license, including: (1) the existence of misstatements on a license application;⁶⁴ (2) a pending indictment or criminal action against the applicant, or a pending civil or administrative action that relates to the applicant's ability to engage in such business;⁶⁵ (3) the commission of racketeering activity or association with those who have been convicted for engaging in such activity;⁶⁶ and (4) association or involvement with members of an organized crime group, as identified by federal, state, or city law enforcement, when the applicant "knew or should have known of the organized crime associations of such person."⁶⁷ From the array of the above considerations, and others that may be determined by the Commission, one can surmise that the new law makes it rather difficult for "corrupt" individuals and entities to make their way over the licensing threshold and into the industry.⁶⁸ As for those carter companies controlled by organized crime, but already in the industry, Local Law 42 has made it more burdensome for them not only to remain there, but to feel comfortable and secure conducting their profitable, and often illegal, business practices.⁶⁹

V. *SANITATION AND RECYCLING INDUSTRY, INC. v. CITY OF NEW YORK*:⁷⁰
THE CONSTITUTIONAL CHALLENGE

Shortly after the enactment of Local Law 42, licensed carters in the industry attacked the new law in every conceivable aspect by which they might persuade the court to grant them relief.⁷¹ The law was enacted on June 3, 1996, and by the end of that same month, a challenge had been brought against Local Law 42 in the United States District Court for the Southern District of New York.⁷² In *Sanitation and Recycling Industry, Inc. v. City of New York*,⁷³ the plaintiffs, licensed carters, challenged the

63. *See id.*

64. *See id.* § 16-509(a)(i).

65. *See id.* § 16-509(a)(ii).

66. *See id.* § 16-509(a)(v).

67. *See id.* § 16-509(a)(vi).

68. *See Sanitation and Recycling Indus., Inc. v. City of New York*, 928 F. Supp. 407, 410 (S.D.N.Y. 1996).

69. *See id.*

70. 928 F. Supp. 407 (S.D.N.Y. 1996).

71. *See id.* at 410.

72. *See id.*

73. *Id.*

new law and sought relief on nine claims, which the court divided into three categories.⁷⁴ The City moved for summary judgment.⁷⁵

A. *The Plaintiffs' Claims*

The first category of the plaintiffs' claims focused on the four sections of the law "enacted to cure the past effects of anti-competitive practices, and eliminate those practices in the future by incorporating term limitations into all contracts between carters and their customers."⁷⁶ Specifically, the provisions included: (1) two-year limitations on all contracts;⁷⁷ (2) termination of a contract by either party, effective thirty days after the law's enactment, that would give such party the right to end the contract upon thirty days written notice unless the carter receives a new license from, or was granted a waiver by, the Commission;⁷⁸ (3) consumer rights to nullify carting contracts that have been automatically distributed to another carter, upon thirty days notice to the carter;⁷⁹ and (4) authority by the Commission to exclude private carters from two test areas to be established in the future.⁸⁰ The plaintiffs claimed that these four clauses conflicted with the United States Constitution in that they violated the Contract, Takings, and Due Process Clauses.⁸¹

The next category of allegations focused on those sections of the law that gave the Commission discretion to: (1) mandate that a licensee enter a contract with an independent auditor;⁸² and (2) grant a waiver regarding that provision of the law that renders contracts concerning those denied renewals terminable upon thirty days notice.⁸³ The plaintiffs cited the Due Process Clause as a basis for this challenge, arguing that these practices would not provide for notice and an opportunity to be heard before an

74. *See id.*

75. *See id.*

76. *See id.* at 412.

77. *See id.* (citing Local Law 42 of 1996, N.Y. COMP. CODES R. & REGS. tit. 42, §§ 11(i), (ii) (1996)).

78. *See id.* (citing Local Law 42 of 1996, N.Y. COMP. CODES R. & REGS. tit. 42, § 11(iii)(1996)).

79. *See id.* (citing N.Y. CITY ADMIN. CODE § 16-520(e)(ii) (1997)).

80. *See id.* (citing N.Y. CITY ADMIN. CODE §§ 16-504(h), 16-523, 16-524 (1997)).

81. *See id.*

82. *See id.* (citing N.Y. CITY ADMIN. CODE § 16-511 (1997)).

83. *See id.* (citing Local Law 42 of 1996, N.Y. COMP. CODES R. & REGS. tit. 42, § 11(iii) (1996)).

administrative action is taken.⁸⁴ The plaintiffs also challenged the provisions as “impermissibly vague.”⁸⁵

Finally, the plaintiffs challenged a number of provisions in the law that govern the type of information the Commission may use in assessing applicants.⁸⁶ These provisions allowed the Commission to access business and financial records and to investigate possible indictments regarding trade associations and organized crime.⁸⁷ The plaintiffs proposed that such information violated the constitutional right to privacy and freedom of association.⁸⁸

Before conducting a more thorough analysis of the plaintiffs’ claims, the court noted that the regulation of the industry has traditionally been a police power, and as such the court should “respect the wide discretion” given to the legislature in such an area.⁸⁹

B. *The Court’s Analysis of the Contracts Clause Claim*

The court rejected the plaintiffs’ argument that the Contracts Clause of the Federal Constitution should be a basis for granting relief on the plaintiffs’ first set of claims.⁹⁰ In reaching this conclusion, the court applied a balancing test, comparing the level of the impairment of contractual relationships with the question of whether “legitimate and significant purposes support the law.”⁹¹ Rejecting the plaintiffs’ argument that the impairment of contractual relationships permitted in “emergency economic conditions” was inapplicable in this instance,⁹² the court cited the United States Supreme Court’s decision in *Energy Reserve Group, Inc. v. Kansas Power and Light Company*,⁹³ which held that the public purpose in altering contractual relations “need not be addressed to an emergency or temporary situation.”⁹⁴ Examining the testimony presented at the legislative hearings, the district court then concluded that the enactment of

84. *See id.*

85. *See id.* The Court found that the statute provided for other ways of preventing the termination clause from taking effect, and, therefore, did not address this claim. *See id.* at 419 n.7.

86. *See id.*

87. *See id.* (citing N.Y. CITY ADMIN. CODE §§ 16-508, 16-509, 16-520 (1997)).

88. *See id.*

89. *Id.*

90. *See id.* at 416.

91. *Id.* at 414.

92. *Id.*

93. 459 U.S. 400 (1983).

94. *Id.* (citing *Sanitation and Recycling Indus., Inc. v. City of New York*, 928 F. Supp. 407, 414 (S.D.N.Y.1996)).

the law and its effects on contractual relationships withstood constitutional attack, noting that the law sought to reinstate fairness in contracting and that the City Council selected a reasonable means to accomplish this purpose.⁹⁵

C. *The Court's Analysis of the Takings Clause Claim*

The court rejected the plaintiffs' argument that the Takings Clause should be a basis for granting them relief on their first set of claims.⁹⁶ The plaintiffs argued that the Commission's activity pursuant to Local Law 42 constituted a "taking," since it "interferes with carters' reasonable investment-backed expectations by denying them the economically viable use of their contract rights."⁹⁷ The City argued that this was not a "taking," largely due to the legitimate state interest at hand, but also since the plaintiffs were still able to use their property for economic gain.⁹⁸

The court agreed with the propositions advanced by the City in its defense of the law.⁹⁹ Several factors led the court to conclude that the law's enforcement would not constitute a "taking" for constitutional purposes, namely:

- (1) the speculative nature of any losses on the part of the plaintiffs,
- (2) the fact that any losses will be less severe than the total or nearly total loss of value required by the Supreme Court in Takings cases, (3) the heavily-regulated nature of the carting industry, and (4) the non-physical nature of the government action

. . .¹⁰⁰

Local Law 42 thus survived the second part of the constitutional challenge.¹⁰¹

D. *The Court's Analysis of the Due Process Clause Claims*

The plaintiffs made four due process arguments. First, the plaintiffs challenged the waiver provision and termination clause of Local Law 42,

95. *See Sanitation and Recycling Indus., Inc.*, 928 F. Supp. at 416.

96. *See id.* at 418.

97. *Id.* at 416.

98. *See id.*

99. *See id.* at 418.

100. *Id.*

101. *See id.*

which allow either party to terminate the contract upon thirty days written notice unless the carter receives a new license from the Commission.¹⁰² Under the law, a carter may seek a waiver of this customer privilege, but the Commission may deny the application with or without a hearing.¹⁰³ The plaintiffs contended that this deprived them of their property—that is, their preexisting contracts—without due process.¹⁰⁴ Federal case law indicates that in order to support a claim for deprivation of property, the plaintiffs must demonstrate “that the statute could never be applied in a constitutional manner.”¹⁰⁵ However, the court noted that the plaintiffs could have bypassed the termination clause by obtaining a new license from the Commission,¹⁰⁶ and the new license application process entitles a carter to be heard before a contract becomes terminable by a party.¹⁰⁷ Thus, there existed alternative means of preventing the plaintiffs’ contracts from becoming subject to the law’s termination clause, and the plaintiffs’ first due process argument failed to persuade the court.¹⁰⁸

Second, the plaintiffs argued that the two-year limit for contracting deprived them of due process, since the limit divested them of their property interests in any contracts that exceeded the time limit and lessened the value of their businesses for sale or collateral purposes.¹⁰⁹

The court accorded no merit to these arguments on either procedural or substantive due process grounds.¹¹⁰ In response to the procedural due process challenge, the court cited the “well-established” premise that a “government’s change in established policy, even if it works to an individual’s commercial detriment, does not create entitlement to a hearing.”¹¹¹ Therefore, the legislature can act without considering the implications for every individual citizen who may be affected.¹¹² In response to the plaintiffs’ substantive due process claim, the court found that the City had legitimate justifications for implementing the law and its provisions—including the two-year contractual limit—and as such the

102. *See id.*

103. *See id.* at 419.

104. *See id.* (arguing that the alleged violation of due process stemmed from the Commission’s ability to reject plaintiffs’ applications for waivers, thereby making preexisting contracts become terminable at will after 30 days).

105. *Id.* at 418. (citing *New York State Club Ass’n v. City of New York*, 487 U.S. 1, 11 (1988)).

106. *See id.* at 419.

107. *See id.*

108. *See id.*

109. *See id.* at 419-20.

110. *See id.* at 420.

111. *Id.* (citing *O’Bannon v. Town Court Nursing Ctr.*, 447 U.S. 773, 789 (1980)).

112. *See id.*

plaintiffs could not demonstrate that the legislature had acted in an arbitrary and capricious manner.¹¹³

The plaintiffs' third due process challenge involved the possible appointment of an auditor to a carter as a condition of a license, on the basis that the law does not afford the license applicant a hearing before the Commission decides to appoint an auditor.¹¹⁴ This due process challenge failed as well, since the only purported "injury" suffered would be supervision by an auditor, albeit at a carter's cost.¹¹⁵ Thus, the property interest of which the plaintiffs claimed to be deprived was simply the opportunity to carry on business as it had prior to the law; it was not an interest amounting to the kind of a property rights protected by the Due Process Clause.¹¹⁶ The legislature's power to enact legislation in the public interest thus trumped this claim.¹¹⁷

In the fourth due process challenge, the plaintiffs contended that the overbroad definition of "applicant"—specifically, the definition of "principal"—violated their due process rights, since the definition had the potential to impute wrongdoing to an "innocent" carter with an allegedly "bad" principal.¹¹⁸ In evaluating the plaintiffs' claim, the court applied a "rational relation" test: "economic regulation passed pursuant to a local government's police power need only be rationally related to a legitimate governmental purpose."¹¹⁹ The court concluded that examining good character is an essential element in eradicating organized crime from the industry.¹²⁰ As the next Part illustrates, the court made a similar argument in rejecting the plaintiffs' final constitutional challenge based on the right to freedom of association and the right to privacy.¹²¹

113. *See id.*; *supra* notes 90-95 and accompanying text.

114. *See Sanitation and Recycling Indus., Inc.*, 928 F. Supp. at 420.

115. *See id.*

116. *See id.*

117. *See id.* at 421.

118. *See id.* at 421-22. (The statute has broadened the definition of principal to include any member of the entity applying for a license whose children, grandchildren, or parents own in the aggregate 10% or more of the applicant entity.)

119. *Id.* at 422 (citing *Hertz Corp. v. City of New York*, 1 F.3d 121, 132 (2d Cir. 1993)).

120. *See id.* (The court noted that such regulation would prevent individuals with ownership interest in the entities applying for a license from evading the Commission's investigation by simply transferring ownership to a relative.)

121. *See id.*

E. *The Court's Analysis of the Right to Freedom of Association and the Right to Privacy Claims*

The application for a license under Local Law 42 requires substantial disclosure of information, including any information that could imply a connection to organized crime, which the Commission may then consider when deciding whether to grant a license.¹²² The plaintiffs challenged these disclosure requirements as a violation of their rights to privacy and freedom of association.¹²³ The court rejected this final argument for several reasons.¹²⁴ First, the statute was designed to require disclosure of those issues that relate directly to the purpose for its enactment.¹²⁵ Second, the court stated that "an individual's freedom of association may be curtailed to further significant governmental interests, especially those seeking to 'eliminat[e] the public evils of crime, corruption and racketeering' from a regulated industry."¹²⁶ Third, as a basis for striking down the plaintiffs' freedom of association claim, the court applied a balancing analysis.¹²⁷ The court held that so long as the disclosure requirement helps further a government interest and is not discriminatory in its administration, it will be deemed valid.¹²⁸

F. *Local Law 42 of 1996 Passes Constitutional Muster*

The City was granted summary judgment.¹²⁹ The court noted that it agreed with the plaintiffs' arguments that arguably "good" carters should not have to suffer for the acts of the "bad."¹³⁰ However, the court viewed the law as a means of protecting those carters who conduct business fairly. It stated:

The surgery performed by Local Law 42 clearly was essential, overdue and carefully tailored to protect the public interest with measured consideration of the interests and welfare of those who strive only for fair business conditions . . . The public in interest

122. *See id.*

123. *See id.*

124. *See id.* at 423.

125. *See id.*

126. *Id.* (citing *United States v. International Brotherhood of Teamsters*, 941 F.2d 1292, 1297 (2d Cir. 1991)).

127. *See id.*

128. *See id.*

129. *See id.* at 424.

130. *See id.*

required drastic corrections—the police power of the City provided the means.¹³¹

Local Law 42 survived.

G. *The Aftermath*

The plaintiffs appealed their loss to the United States Court of Appeals for the Second Circuit.¹³² However, they were denied their request for a declaratory judgment on virtually the same grounds that the district court had enunciated a year earlier.¹³³ The lawsuits did not end there. Recall the termination provision, which entitled either party to terminate a contract after notice of thirty days. If a carter wished to prevent a customer from terminating the agreement, it essentially had two options: (1) obtain a new license from the Commission, which often was not an option for many carters due to the aforementioned requirements; or (2) apply for, and be granted, a waiver of the termination provision by the Commission.¹³⁴

Since many applicants were denied the opportunity for a waiver, this provision frequently has been litigated.¹³⁵ The courts, however, consistently have upheld the waiver provision and the denial of waivers to carters. In three cases, *Vigliotti Brothers Carting Company v. The Trade Waste Commission of the City of New York*,¹³⁶ *Universal Sanitation Corporation v. The Trade Waste Commission of the City of New York*,¹³⁷ and *D & D Carting Company, Inc. v. City of New York*,¹³⁸ the Commission denied a waiver to each of the petitioner carting companies, and the courts upheld the Commission's decisions. In each case, the petitioner company had at least one employee who allegedly violated of section 16-509 of the Code, which lists possible grounds for denial of a license,¹³⁹ including pending charges, past criminal activity, and involvement with racketeering

131. *Id.*

132. *Sanitation and Recycling Indus., Inc. v. City of New York*, 107 F.3d 985 (2d Cir. 1997).

133. *See id.*

134. *See* Local Law 42 of 1996, N.Y. COMP. CODES R. & REGS. tit. 42, § 11(iii) (1996).

135. *See, e.g.,* *Universal Sanitation Corp. v. Trade Waste Comm'n of the City of New York*, 940 F. Supp. 656 (S.D.N.Y. 1996); *Vigliotti Bros. Carting Co. v. Trade Waste Comm'n of the City of New York*, 648 N.Y.S.2d 489 (Sup. Ct. N.Y. County 1996); *D & D Carting Co. v. City*, 658 N.Y.S.2d 825 (Sup. Ct. N.Y. County 1977).

136. 216 N.Y. L.J., Dec. 24, 1996, at 26 (Sup. Ct. N.Y. County).

137. 940 F. Supp. 656 (S.D.N.Y. 1996).

138. 658 N.Y.S.2d 825 (Sup. Ct. N.Y. County 1997).

139. *See* N.Y. CITY ADMIN. CODE § 16-509 (1997).

and organized crime. Decisions of administrative agencies are not to be disturbed unless the agency's determination is arbitrary and capricious, or lacks a rational basis.¹⁴⁰ Thus, the court employed a test that required only a "rational basis" for the denial of a waiver, and in most cases, the court found that the connection was more than rational.¹⁴¹

For example, in *D & D Carting Company*, each of the petitioner carting companies engaged in dishonest trade practices, including the use of evergreen clauses and routine overcharges.¹⁴² Moreover, two of the three petitioner companies had a president and sole shareholder that was an officer of an indicted trade association, neither of which took "steps to prevent its corrupt activities."¹⁴³ In *Universal Sanitation*, the Commission denied the plaintiffs' license applications due to the companies' "questionable contracting practices" and the disreputable background of Benny Villani, a principal of both companies, holding a controlling fifty-six percent interest in one of the companies and a fifty percent interest in the other.¹⁴⁴ The Commission also noted "the pending racketeering charges against Villani, his alleged affiliation and association with the Genovese organized crime family, and plaintiffs' past contracting practices, which included the use of 'evergreen clauses.'"¹⁴⁵ Finally, in *Vigliotti Brothers*, Arnold Vigliotti, the company's principal, was a defendant in a civil racketeering case, in which he was accused of paying bribes to municipal employees.¹⁴⁶ In addition, the company's president, Charles Vigliotti, and Vincent J. Vigliotti, Arnold Vigliotti's uncle, were also indicted for organized-crime activity.¹⁴⁷

140. See *D & D Carting Co.*, 658 N.Y.S.2d at 828 (citing *Pell v. Board of Educ. of Union Free Sch. Dist. No. 1*, N.E.2d 321 (N.Y. 1974)).

141. See, e.g., *Universal Sanitation Corp. v. Trade Waste Comm'n of the City of New York*, 940 F. Supp. 656 (S.D.N.Y. 1996); *D & D Carting Co.*, 658 N.Y.S.2d at 825; *Vigliotti Bros. Carting Co. v. Trade Waste Comm'n of the City of New York*, 648 N.Y.S.2d 489 (Sup. Ct. N.Y. County 1996).

142. See *D & D Carting Co.*, 658 N.Y.S.2d at 827-28.

143. *Id.* Enrico Casagrande, president and sole shareholder of Green Bay Sanitation Corp., and Anthony DiNardi, president and sole shareholder of O'Brien Sanitation Corp., both held positions as officers on the board of directors of an indicted trade association. See *id.*

144. See *Universal Sanitation Corp.*, 940 F. Supp. at 660.

145. *Id.* In June 1996, Villani and another carting company co-owned by him were federally indicted on racketeering charges concerning their alleged participation in organized crime, including conspiracies to commit extortion and antitrust violations in the waste collection industry. See *id.*

146. See *Vigliotti Bros.*, 648 N.Y.S.2d at 489.

147. See *id.* Charles Vigliotti, the petitioner company's president, was a vice president of the Queens County Trade Waste Association from 1992 until 1996. This association was indicted, and District Attorney Morgenthau charged the group with enforcing illegal customer allocation and price-fixing schemes during those years. Vincent

These lawsuits demonstrated the truth behind the long-sSpeculated connection between the industry and organized crime, as well as the effectiveness of Local Law 42.

VI . ONE COMPANY'S WELCOME INTO THE INDUSTRY

"One month after my company, Browning-Ferris Industries, began to compete for business hauling commercial waste in New York City, one of our managers found the head of a large German shepherd under his mailbox. Taped in its mouth was a note that read, 'Welcome to New York.'"¹⁴⁸

These are the words of Philip Angell, vice-president of Browning-Ferris Industries (BFI), a national waste hauling company. In the *Wall Street Journal*, Mr. Angell praised the City for changing the corruptive nature of the industry.¹⁴⁹ In 1993, BFI assessed the New York market, which at the time earned \$1.5 billion annually.¹⁵⁰ When it decided to enter the market, BFI soon realized the extent of criminal influence in the industry after various acts of hostility toward BFI—including the incident recalled above. Still, BFI remained steadfast and felt confident that it would have a competitive advantage over the smaller local carting companies.¹⁵¹ In fact, BFI stated that it lowered the monthly waste disposal charge of its first customer, Columbia-Presbyterian Hospital, from \$100,000 to \$40,000.¹⁵²

Still, in the years prior to the enactment of Local Law 42, BFI had its problems with the companies in the cartel that controlled the industry.¹⁵³ Although BFI believed that it could lower hauling rates for many City businesses, potential customers were reluctant to abandon the carters that were affiliated with the cartel.¹⁵⁴ According to Mr. Angell, BFI had only 200 customers in the summer of 1995, but possessed signed contracts from over 500 companies that agreed to do business with BFI, but then decided

J. Vigliotti, Arnold Vigliotti's uncle, was also indicted after District Attorney Morgenthau's prosecution of the organized crime cartel. The charges included "actively participating in the indicted trade association's anti-competitive market allocation, and price-fixing scheme, which, included the Queens County Trade Waste Association." *Id.*

148. Philip S. Angell, Editorial, *Cleaning Up the City in More Ways Than One*, WALL ST. J., Dec. 16, 1996, at A16.

149. *See id.*

150. *See id.*

151. *See id.*

152. *See id.*

153. *See id.*

154. *See id.*

not to change carters after all.¹⁵⁵ Although it is unclear exactly what caused this change of heart in the 300 or more potential BFI customers, Mr. Angell believes that the members of the cartel undoubtedly influenced these decisions, instilling fear into the customers.¹⁵⁶ The cartel had plenty to lose, as New York City businesses were paying cartel hauling companies nearly \$500 million in unnecessary overcharges.¹⁵⁷

Frustrated with the industry and its domination, BFI sought aid from Manhattan District Attorney Robert Morgenthau, and eventually allowed an undercover agent to enter BFI to obtain information on organized crime activity in the industry.¹⁵⁸ The agent remained with BFI over the course of the two-year investigation, and the results of the inquiry played a critical role in the shocking 1995 indictments of many companies and individuals in the industry, including those in the *D & D Carting Company* case discussed earlier.¹⁵⁹ These indictments, mentioned in Part II above, confirmed the suspicion that organized crime controlled the industry, and ultimately paved the way for Local Law 42.

BFI represents at least one business that believes the City has “cleaned up” the industry, allowing City businesses “to enjoy the benefits of free and open competition for this essential service.”¹⁶⁰

VII. CRITICISM: THE MAYOR, THE COMMISSION, THE INDUSTRY

A. *The Mayor*

Since the law’s enactment, controversy has prevented it from being deemed a success. Much criticism surrounds the Commission and the mayor under whom it was created. Some argue that Mayor Giuliani, the former United States Attorney for the Southern District of New York,

155. *See id.*

156. *See id.* (“One carter, for example, sent two large, intimidating men to stand inside the door of a small deli on Wall Street every day for a week, disrupting business. Another playfully put his hands around the neck of a small Korean woman who ran a restaurant in Manhattan.”). *Id.*

157. *See id.*

158. *See id.*

159. *See D & D Carting Co. v. City*, 658 N.Y.S.2d 825, 828 (Sup. Ct. N.Y. County 1997). In that case, however, it should be noted that the petitioners alleged that BFI itself had engaged in its own share of wrongdoing; the courts, however, did not address such allegations. *See id.*

160. Angell, *supra* note 148.

continues to act more like a prosecutor than a mayor.¹⁶¹ His passion and fervor when fighting organized crime in many New York City businesses and institutions—discussed briefly in Part VIII below—has caused him to be labeled “a touch mad,”¹⁶² “an enigma,” “unlovable,” and “Nixonian.”¹⁶³ He has been accused of being ruthless when battling his foes. When one reporter questioned him about this reputation, Giuliani responded: “Robert Kennedy was constantly attacked for being ruthless. When I was a young person, I could never understand that. He had an objective to achieve, and as far as I could tell, he did it honestly but in a very strong way. And isn’t that what you want in a leader?”¹⁶⁴ For Giuliani’s many supporters, the answer is yes.

For others, however, Giuliani’s tactics—regardless of the results achieved—seem harsh and unfocused, in that the “good guys” may have to suffer for the actions of the “bad.”¹⁶⁵ In short, some argue that in making history for “cleaning up” many businesses that no mayor could clean up before, the Giuliani Administration essentially has treated every businessperson like a gangster, causing many non-criminal taxpayers to lose their jobs.¹⁶⁶ As Peter Powers, a long time friend of the mayor, explained: “To understand Rudy Giuliani, you just gotta see a guy focused on results. You either like the way he gets there or you don’t.”¹⁶⁷

B. *The Commission*

The Commission also has been criticized. As one critic put it, the Commission is “running roughshod in an unprecedented exercise of power designed to destroy the approximately 200 remaining small carting businesses that have never been convicted or indicted of any crimes.”¹⁶⁸

161. See Mark Kriegel, *Lame Duck Can’t Work to Heal City*, DAILY NEWS (N.Y.), Nov. 3, 1997, at 6 (“[T]he fact is, almost a decade after leaving the U.S. Attorney’s Office, Rudolph Giuliani still acts like a prosecutor. Not only does he need the bad guys; he needs to make them big and organized, part of a grand conspiracy, larger than life.”).

162. See Richard Cohen, *Safe-Streets Mayor*, WASH. POST, Oct. 28, 1997, at A21 (“[The mayor of New York] is a bundle of petulance and grievances, a workaholic who, like the city itself, seems never to sleep. New Yorkers can go to bed assured that Rudolph Giuliani will not. He is out there, in Gotham, chasing down the bad guys—and they include, of course, his political foes.”).

163. See Martha Sherrill, *Rudy Giuliani Is a Colossal Asshole*, ESQUIRE, Oct. 1, 1997, at 74.

164. *Id.*

165. See Kriegel, *supra* note 161.

166. See *id.*

167. See Sherrill, *supra* note 163.

168. See Gerald Padian, *Fairness Trashed in New York*, WASTE NEWS, Oct. 20, 1997, at 8.

Some believe that the Commission has been denying licenses or renewals to small, family carters with little or no proof of organized crime affiliation.¹⁶⁹ According to one reporter, in late 1997, "one big gangster-carter with no indictments and all of two trucks went out of business after only half a century."¹⁷⁰ John Isabella of the Bronx, who owns a small carting company, fears the same will happen to him.¹⁷¹ As of November 1997—a year and a half after Local Law 42 took effect—Isabella still had not been granted a permanent license from the Commission.¹⁷² His business was at a standstill and, according to Isabella: "I can't buy a new truck, can't invest in a business if I don't know if [the Commission is] going to give me a license. I don't know how they can do this. It's a complete mystery. We've never committed a crime, never been indicted."¹⁷³

In fact, many small carting companies insist the Commission is not rendering its licensing decisions quickly enough.¹⁷⁴ According to Gerald Padian, an attorney for many of the small carters, the Commission has stalled for nearly two years in granting licenses to approximately 140 small carting companies.¹⁷⁵

C. *The Industry*

As for the state of the industry, the market remains "highly fragmented" and, as of 1997, no one company had more than five percent of the City's 250,000 commercial customers.¹⁷⁶ Over 300 carters, most of them with no more than five trucks, continue to operate. Nearly 350 carters have applied to the Commission for relicensing.¹⁷⁷

Although the cartel seems to have vanished after Local Law 42, the frequent sales of the smaller carting companies to the larger, national firms, suggests that the industry is once more consolidating. The consolidators are mainly the three national waste collection companies currently in the market: Browning-Ferris Industries, Inc., Waste Management, Inc., and

169. See Kriegel, *supra* note 161.

170. *Id.*

171. *See id.*

172. *See id.*

173. *Id.*

174. See Juan Gonzales, *New Cartel Cashing in on Trash*, DAILY NEWS (N.Y.), July 7, 1998, at 10.

175. *See id.*

176. See Steve Daniels, *Competition Comes to New York*, WASTE NEWS, Apr. 21, 1997, at 10.

177. *See id.*

U.S.A. Waste Services, Inc.¹⁷⁸ As of 1997, these companies already controlled over half of the transfer capacity in the City, and some believe that this percentage will continue to increase.¹⁷⁹

In fact, two years after the enactment of Local Law 42, some of the people who fought the old mob cartel claim that a new monopoly of national carting firms is again driving up the price for trash removal. Critics contend that the industry is in the hands of a new cartel, one that “wears suits” and “is traded on the stock exchange.”¹⁸⁰ Specifically, the greatest concern of the small carter businesses is the recent 1998 announcement of a planned merger between Waste Management, Inc., the largest trash-hauling company in the country, and U.S.A. Waste, Inc., the third largest waste hauling company.¹⁸¹ Since the merger was announced, prices for dumping at waste transfer stations around the City have already risen over ten percent.¹⁸² Although Waste Management officials deny that the price increases are related to the merger, the Commission is examining the reasons behind the augmented fees.¹⁸³ Before taking effect, the merger must be approved by the United States Department of Justice, which may require the merged company to divest some of its assets in order to escape antitrust violations.¹⁸⁴ In a letter to United States Attorney General Janet Reno, Brooklyn Borough President Howard Golden, who opposes the merger, wrote that the merged entity will have control over seventy-two percent of the City’s transfer-station capacity, thus “exchanging organized-crime control for monolithic corporate control.”¹⁸⁵

The City is currently working with the Department of Justice to determine if the merger complies with antitrust regulations.¹⁸⁶ The merger also must be approved by the Commission as part of the licensing rules. Although prominent City officials, like Borough President Golden, oppose the merger, some cite to the Giuliani Administration’s “record of warm embraces for big business” as a sign that the merger may be approved.¹⁸⁷ Only time will tell.

178. *See id.*

179. *See id.*

180. Bob Liff, *Garbage Biz Deal Gets Dirty Looks in Boro*, DAILY NEWS (N.Y.), May 4, 1998, at 2.

181. *See Gonzales, supra note 174.*

182. *See id.*

183. *See id.*

184. *See Philip Lentz, Back to Garbage Cartel? Giants to Merge; Prices May Jump Here*, CRAIN’S N.Y. BUS., Mar. 16, 1998, at 1.

185. *Gonzales, supra note 174.*

186. *See Bob Liff, supra note 180.*

187. *Id.*

The criticisms summarized above represent just a few problems and concerns revolving around Local Law 42 and its impact on the industry as well as the City. Still, Giuliani's supporters contend that the law has been a necessary evil in a city where prosperity invites corruption, and that Giuliani still "has a quality they seek" in a leader.¹⁸⁸

VIII. CLEANING UP THE CITY IN OTHER AREAS

Local Law 42 of 1996 was not the only law passed during the Giuliani Administration that was designed to oust organized crime from City businesses. The Fulton Fish Market (the "Market"), the largest fish market in the country, conducts more than \$1 billion of business each year.¹⁸⁹ Profits allegedly had dropped by two-thirds over the past fifteen years due to organized crime's control of the Market.¹⁹⁰ According to Giuliani, organized crime took a percentage of all transactions related to the Market, including transactions involving the small unloading companies that met the wholesale trucks as they arrived.¹⁹¹ It is believed that the Market has been controlled by the Genovese crime family dating back to 1919, when Joseph "Joey Socks" Lanza set up the Sea Food Workers' Union.¹⁹² Since that time, the Market has been haunted by organized crime. As Giuliani explained:

You just couldn't . . . simply do business here without paying the Genovese crime family. They were into every business, taking money from every business. They've had influence over some of the union operations. They've created jobs that aren't necessary so that people have to pay. They have also used it as a front for conducting other criminal activities.¹⁹³

The Giuliani Administration charged that these corrupt practices resulted in price fixing and shakedown schemes, as well as acts of physical violence, damage to property, and theft.¹⁹⁴

188. Richard Cohen, *supra* note 162.

189. See Ben Macintyre, *Fish Market Is Guttled as FBI Closes Net on New York Mob*, *TIMES* (London), Mar. 31, 1995.

190. See *id.*

191. See *60 Minutes: A Fine Kettle of Fish* (CBS television broadcast, Feb. 18, 1996) (Ed Bradley speaking).

192. See Macintyre, *supra* note 189.

193. *60 Minutes: A Fine Kettle of Fish*, *supra* note 191 (Rudolph Giuliani speaking).

194. See *id.* (Melissa Block speaking).

The Giuliani Administration sought to remedy the situation at the Market. On June 15, 1995, Mayor Giuliani approved Local Law 50 of 1995,¹⁹⁵ which was designed “to amend the administrative code of the city of New York, in relation to the regulation of the Fulton Fish Market distribution area and other seafood distribution areas.”¹⁹⁶ Like the licensing of trade waste carters, the law requires the licensing of those conducting business at the Market. As one commentator described it, the law was “a little bill that carried a big stick. It allowed the City to invoke its rights as landlord. It could determine who it wanted in the market, who had the character, the integrity to do business here.”¹⁹⁷ Although some people claimed that the law erroneously labeled all companies conducting business at the Market as the “bad guys,”¹⁹⁸ it was hard to dispute that many of the businesses were involved in organized crime. In fact, just two days after one of the preliminary City Council hearings on corruption at the Market, a fire blazed through one of the Market’s main buildings.¹⁹⁹ Although an organization of businesses and individuals working at the Market brought a federal lawsuit to strike down Local Law 50 on the grounds that it violated the state and federal constitutions, the court summarily dismissed the action, holding that the law’s license and registration procedures were within the police power of the City.²⁰⁰

The Giuliani Administration contended that the mob’s stronghold on the Market extended even to the parking lots at the back end of the Market, where a group of companies controlled where retail buyers parked their vehicles.²⁰¹ In 1997, in *A & J Parking Corporation v. Giuliani*,²⁰² the commissioner of the City’s Department of Business Services, acting

195. See N.Y. CITY LEGIS. ANNUAL, at 250. At the preceding meeting of the New York City Council, held on May 31, 1995, 49 Council members voted for the law, while only one member opposed it. See *id.*

196. Local Law 50 of 1997, N.Y. COMP. CODES R. & REGS. (1995).

197. *60 Minutes: A Fine Kettle of Fish*, *supra* note 191.

198. See *id.* “If there are criminals operating in the market, the city has an obligation to prosecute them. But no one has a right to label as corrupt an entire class of workers because someone alleges that some of them may be dishonest.” *Id.* (Frank Mineo, President of Smitty’s Filet House, speaking).

199. See *id.* Authorities determined that the cause of the fire was arson, and the ensuing investigation revealed that the fire was set in an area where records were kept—a possible indication that someone was attempting to destroy the documents. See Macintyre, *supra* note 189.

200. See Committee to Save the Fulton Fish Market, Inc. v. City of New York, 1996 WL 376984, at *3 (July 3, 1996).

201. See *60 Minutes: A Fine Kettle of Fish*, *supra* note 191. These loading crews [at the parking lots] collect substantial amounts of money for allowing people the privilege of parking on city streets and city lots.” *Id.* (Randy Mastro, Mayor Giuliani’s Chief of Staff, speaking).

202. 217 N.Y. L.J., Feb. 3, 1997, at 28 (Sup. Ct. N.Y. County Feb. 3, 1997).

pursuant to Local Law 50, rejected an application for the owners of a parking lot at the Market. The last permit issued to the plaintiffs had expired in 1983, and the City was free to deny continuation of the business. Despite the plaintiffs' arguments, the City was granted summary judgment in the ensuing lawsuit and the permit was denied.²⁰³ According to the court, the property in question fell under the New York City Charter's definition of "waterfront property," which is exclusively controlled by the Department of Business Services.²⁰⁴ The court also allowed the City to amend its answer to add a *res judicata* defense based on a decision in *Crivelli & Crivelli v. City of New York*,²⁰⁵ which was rendered three days after the City served its answer. The *Crivelli* court determined that various businesses, including the plaintiffs in *A & J Parking Corp.*, did not have any right to occupy market locations, and cited to the questionable backgrounds of the companies involved.²⁰⁶ The owners of the plaintiff company also possessed two seafood distribution companies, both of which were denied licenses by the Department of Business Services.²⁰⁷

There were other victories over organized crime throughout the City. In 1992, the City ousted some of the organized crime presence from Manhattan's Garment District (the "District"). Thomas and Joseph Gambino, of the Gambino crime family, pleaded guilty to violations of the antitrust laws, paying tremendous monetary fines and agreeing to leave the District.²⁰⁸ Their operation previously controlled the trucking of shipments to and from the Garment District, and grossed \$70 million while netting them \$22 million in personal profits.²⁰⁹ The Gambinos pleaded guilty to the charges in 1992, and by 1995, the cost of shipping apparel had dropped twenty percent.²¹⁰

At Manhattan's Jacob K. Javits Convention Center (the "Center"), organized crime had long influenced the Center's business activity. The labor pacts between the unions—which were allegedly run by organized crime—and the exhibition firms often cost companies exhibiting at the

203. *See id.*

204. *See id.* (citing N.Y. CITY CHARTER ch. 52 § 1150(7)(b) (1989)).

205. Index No. 122645/95 (Sup. Ct. N.Y. County Aug. 26, 1996).

206. *See id.*

207. *See A & J Parking Corp. v. Giuliani*, 217 N.Y. L.J., Feb. 3, 1997, at 28 (Sup. Ct. N.Y. County Feb. 3, 1997).

208. *See* Greg B. Smith, *Breaking the Mob's Back*, DAILY NEWS (N.Y.), May 5, 1998, at 5.

209. *See* Jerry Capeci et al., *Mob Has-Beens and Wanna-Bes: Crackdown Puts Bosses in Prison and Cuts Power over Unions*, DAILY NEWS (N.Y.), May 3, 1998, at 30.

210. *See* Smith, *supra* note 208.

Center from four to fifty times more than exhibiting in other cities.²¹¹ As a result of these overcharges and frequent payoffs, would-be exhibitors took their business to other cities, and the Center lost money.²¹² However, since the Center is publicly owned, those in control of the Center could rely on the taxpayers "to subsidize the operation, and patronage and plunder could continue as usual."²¹³ In 1995, Mayor Giuliani addressed a New York State Senate committee hearing on the Center.²¹⁴ The meeting was designed to eradicate the corruption within the labor unions that worked at the Center.²¹⁵ After these hearings, the state labor committee terminated the employment of many of those associated with organized crime, and by 1997, the Center was making a profit and turning away exhibitors, including some who said their costs of doing business at the Center had dropped ten percent.²¹⁶

The mob's influence even extended to City entertainment. For many years, the Genovese crime family controlled the City's largest street festival, the Feast of San Gennaro on Mulberry Street in Little Italy. The Genovese family allegedly received "rent" from each vendor who wished to participate in the fair. Now, after several indictments and the establishment of an independent monitor to oversee the festival, the City boasts that the festival is free of corruption.²¹⁷

In addition, strides have been made in the construction industry. Teamsters Local 282, a union controlled by organized crime, delivered concrete for use in construction sites across the city. With each transaction, Local 282's leaders received a "kickback." However, in 1995, five union officials pleaded guilty to racketeering charges. As a result, experts estimate that construction costs across the city have declined ten percent.²¹⁸

IX. CONCLUSION

Mayor Giuliani's efforts to expel organized crime from lucrative New York businesses have extended from the trade waste removal industry to the Fulton Fish Market, from the San Gennaro Feast to the Garment

211. See Rich Wilner, *Mayor Giuliani Calls for Committee to Help Cut Costs at Javits Center*, DAILY NEWS (N.Y.), Mar. 17, 1995, at 4.

212. See *id.*

213. James Jacobs, *Corruption: Can We Ever Clean Up the Javits Center?*, NEWSDAY (N.Y.), Apr. 2, 1995, at A35.

214. See Wilner, *supra* note 211.

215. See *id.*

216. See Smith, *supra* note 208.

217. See *id.*

218. See *id.*

District. He has attempted to clean up a city that has been saturated with organized crime for decades, and it appears that he has succeeded. Some of us may never have reason to come into direct contact with some of these "cleaned up" industries. It is likely that most of us will never have reason to contract with a private trash hauling company, nor to make arrangements to exhibit at the Jacob K. Javits Convention Center. Still, there has been a positive impact on the City itself. For example, William Stern, a former head of the City's Urban Development Corporation, observed that the estimated \$300 million that had been organized crime's "take" from the trash-hauling industry was an indirect tax on everything bought and sold in the city.²¹⁹ Perhaps the past influence of organized crime may have affected us more than we realized.

Although some critics argue that the civil rights of the innocent have been sacrificed to expose the guilty, Giuliani's popularity has not wavered. A 1997 poll demonstrated that sixty-two percent of New Yorkers approve of what Giuliani is doing in office.²²⁰ Although some criticize his often ruthless tactics in battling organized crime, after the smoke clears what is left is a New York City that is safer and more productive than before.²²¹ In a 1997 reelection speech, Giuliani vowed to extract the corruption from even more City businesses: "With the confidence that we have turned the city around in so many ways together, we must be vigilant in facing organized crime in all its remaining forms as well We must continue to move forward instead of turning back the clock to the policies of the past."²²²

Mayor Giuliani will continue to "clean up" city businesses. It is just a matter of time before he "smells something fishy" in yet another New York industry.

Marissa L. Morelle

219. See Adler, *supra* note 7.

220. See Sheryl McCarthy, *Rudy's Got Democrats Coming up Empty*, *NEWSDAY* (N.Y.), Feb. 13, 1997, at A60.

221. See *id.*

222. *Giuliani Vows to Keep Fighting Mob: Messinger Calls His War Chest Tainted*, *THE RECORD* (Bergen County, N.J.), Oct. 24, 1997, at A17.