



NEW YORK CITY LAW DEPARTMENT  
2009 ANNUAL REPORT



## Mission

To provide legal representation  
to the City of New York in the tradition  
of excellence and dedication, in furtherance  
of the operation of its government.

## Vision

To be the finest public law office  
providing the highest quality  
representation.

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### Legal Divisions

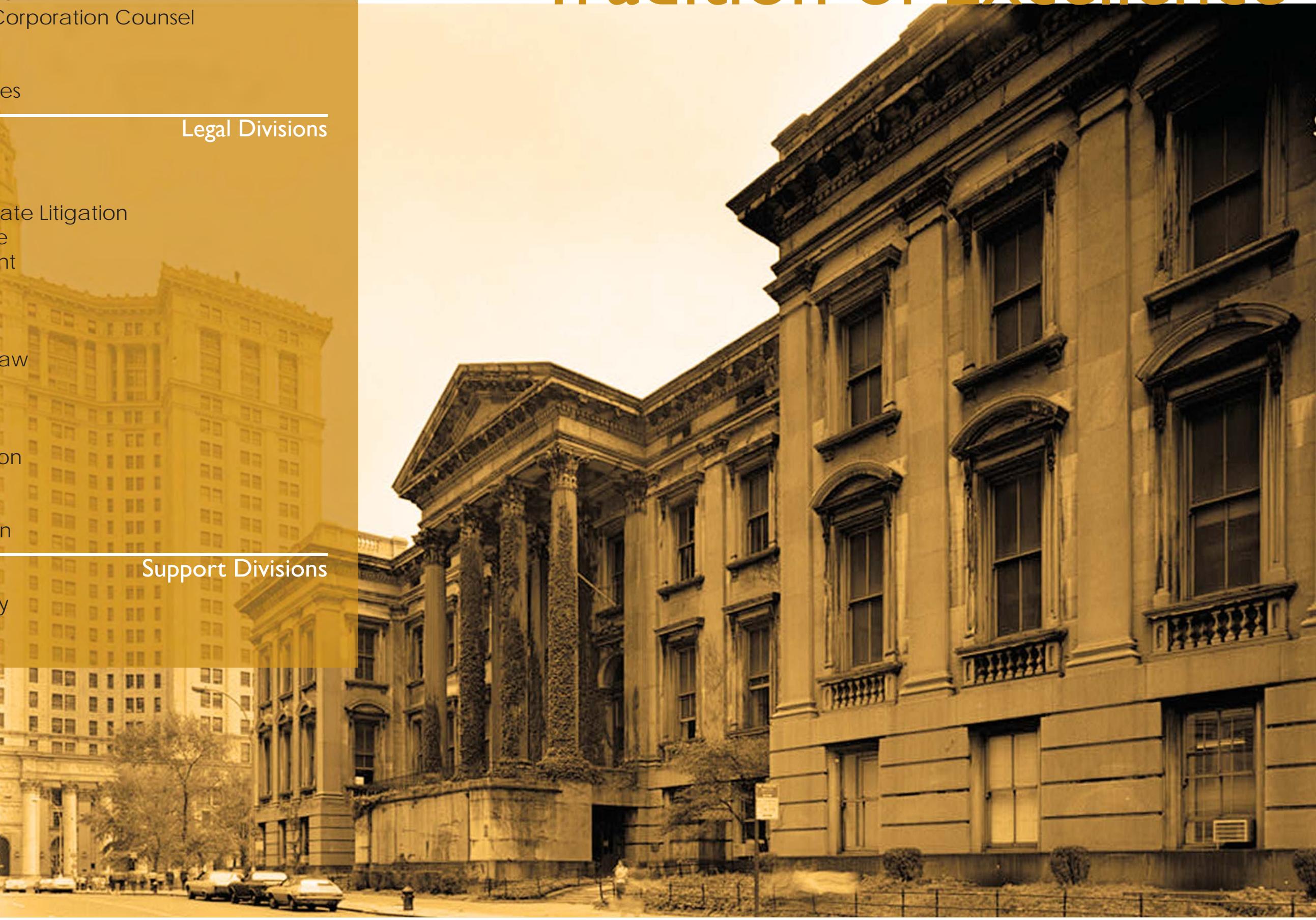
### Support Divisions

*Cover: Tweed Courthouse - Present Day*

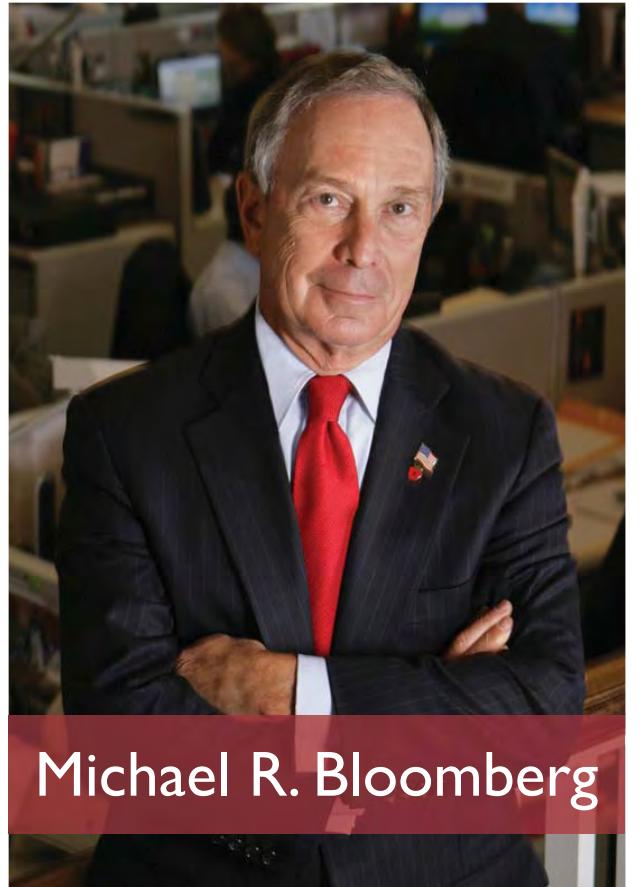
*Right: Tweed Courthouse -1979*

The courthouse was the first permanent government building erected by the City after the completion of City Hall.

# Tradition of Excellence



# MESSAGE FROM THE MAYOR



**Michael R. Bloomberg**

As the more than eight million New Yorkers can attest, our City's private economy and public spaces combine to present a unique set of challenges to our citizens, businesspeople, and lawmakers. The New York City Law Department has been meeting these challenges by capably representing and advising our City on a wide variety of legal matters for more than 160 years.

Especially during these difficult economic times, the Law Department's performance on issues ranging from municipal contracts and community service to billboard regulations and bicycle safety has helped make our City an even better place

to live, work, and visit. A steadfast example of our City's enduring work ethic, the Law Department continues to answer the call to provide high-quality legal representation to the greatest city in the world.

The 2009 Annual Report reflects the Law Department's accomplishments over the past year – and demonstrates why it continues to earn the respect of New Yorkers seeking good sense and judicious problem-solving from our lawmakers and the counselors who advise them. On behalf of the City of New York, I commend Corporation Counsel Michael A. Cardozo and the Law Department's attorneys, administrators, operations staff, and Information Technology Division for a job well-done. All the best for continued success.



Michael R. Bloomberg  
Mayor

# INTRODUCTION FROM THE CORPORATION COUNSEL



**Michael A. Cardozo**

I am pleased to present the New York City Law Department's 2009 Annual Report. Our office serves as the City's legal counsel, and coordinates with every City agency on projects and cases spanning virtually all aspects of the law. We are committed to providing the City and its officials with the highest caliber legal advice and representation.

This report provides an overview of the Law Department's major cases and achievements over the course of the past year. These accomplishments include continued efforts to stimulate the City's economy through new development projects; protect the public fisc by pursuing tax dollars owed

to the City; battle the influx of illegal guns and cigarettes; safeguard the City's technology and trademark rights; and put into place new laws to make the City cleaner, safer and greener.

The report's aim is to capture the full range of the Department's responsibilities and the City's legal issues. I am very proud of our accomplishments, and am honored to work with such a dedicated and talented team.



Michael A. Cardozo  
Corporation Counsel

# OVERVIEW

The New York City Law Department is responsible for all of the legal affairs of New York City. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. Attorneys represent New York City on affirmative and defensive civil litigation, legislative and legal issues, the criminal prosecution of juveniles in Family Court, and Administrative Code enforcement proceedings brought in Criminal Court.

With offices in all five boroughs and Kingston, N.Y., the Law Department handles an active caseload of over 90,000 lawsuits and legal matters each year. In addition to litigation, attorneys draft and review local and state legislation; approve leases, contracts, and financial instruments for the sale of municipal bonds; and negotiate and structure business transactions. Law Department attorneys also provide legal counsel to City officials on a wide range of issues such as immigration, education, judicial selection reform and environmental policy.



Tweed Courthouse Rotunda - 1919



## Executive Counsel

Standing from left to right: G. Foster Mills, Lawrence Kahn, Paul Rephen and Leonard Koerner  
Seated from left to right: Muriel Goode-Trufant, Jeffrey Friedlander, Michael Cardozo and Celeste Koeleveld

# IN THE NEWS

The Law Department is frequently highlighted by major news outlets such as *The New York Times*, *The Associated Press*, and local and national television stations. In addition, it publishes a bi-monthly column, "Municipal Affairs," that is featured in the *New York Law Journal*. Work with the press is coordinated by the Law Department's Media & Communications Office. Below are some cases that made headlines in 2009:

### AP Associated Press

*Appeals Court Upholds New York City's Calories-on-Menus Rule*  
2/17/09

*State Owes NYC \$28.6 Million in Medicaid Money*  
6/4/09

*Court Upholds NYC Right to Limit Fifth Ave Parades*  
11/17/09

### Bloomberg

*New York City Term Extension Approved by Justice Department*  
3/17/09

*New York City Wants Ban on Drilling in Its Watershed*  
12/23/09

*Countrywide, Underwriters Fail Again to Dismiss Suit*  
4/8/09

### DAILY NEWS

*Yankee Stadium Mementos Will Fetch City \$11.5 Million*  
5/8/09

*It's High Time: The City's Amazing New Elevated Park is a Sight to Behold*  
6/7/09

*Judge Oks Cop Breath Tests*  
12/12/09

### New York Law Journal

*Panel Dismisses Bystander's Suit Against NYPD over Shooting*  
8/19/09

*Judge's Ruling Clears Way for Waste Transfer Facility*  
12/29/09

### The New York Times

*Philippines to Pay \$9 Million in Back Taxes*  
1/29/09

*New York Wins Round in Fight Against Indian Tobacco Vendors*  
8/27/09

*City Awarded \$105 Million in ExxonMobil Lawsuit*  
10/20/09

### WNYC

*Federal Judge Rejects Lawsuit Against Willets Point Redevelopment*  
11/26/09

*Bloomberg Sues Thompson for Blocking Plan to Re-open Brooklyn Jail*  
12/2/09

### NEW YORK POST

*Cracking Whip on Owe-TB*  
7/19/09

*City Sets Its Sites on ".nyc" Web Domain*  
10/6/09

# KEY OFFICEWIDE INITIATIVES

## Legislature Passes Collateral-Source Bill Backed by Municipalities

- New York Law Journal, 11/12/09



### Putting an End to Double Dipping

As part of the Governor's Mandate Relief Package, the Law Department corrected a loophole in state law which allowed government workers who are injured to double-dip by collecting payouts twice for the same injury. Unlike their private sector counterparts, government employees were able to simultaneously collect disability pension and payouts from lawsuits without any off-set. New York City alone is expected to save \$14.5 million annually in future lawsuits as a result of the new law.

#### Appeals

Oversaw the multi-year effort and built a statewide coalition of over 1,400 municipalities and other public entities to lobby the State

#### Legal Counsel

Provided counsel and expertise in drafting legislation

#### Tort

Supported legislative efforts with research and case studies

## Federal Judge will Decide who Owns Tavern's Name

- New York Times, 12/1/09



### Spearheading Tavern on the Green Litigation

The Law Department defended the City's interests in the bankruptcy filing of the LeRoy family – the most recent concessionaires of the famed Tavern on the Green restaurant in Central Park. City attorneys prevented City property from being auctioned off – the most valuable item being the trademark name itself. The City and the LeRoy family both claimed exclusive ownership of the trademark, and City attorneys ensured that the trademark would not be auctioned without its claim to ownership being heard. Although the District Court rarely exercises its power to hear pending bankruptcy matters, City attorneys successfully petitioned to have the trademark dispute removed to the Southern District from the bankruptcy court. The City – as the long-time property owner – has operated the restaurant with a series of different concessionaires under the "Tavern" name since 1934.

## NY Judge Tosses Out Term Limits Challenge

- Associated Press, 1/13/09



### Extending Term Limits

Attorneys secured approval from the U.S. Department of Justice for a local law that extends term limits from two terms to three terms for City elected officials, and successfully sought the dismissal of a lawsuit challenging the law.

#### Appeals

Argued the appeal before the 2nd Circuit

#### General Litigation

Argued the case before the Eastern District

#### Legal Counsel

Assisted in preparing the litigation papers, and secured pre-clearance from the U.S. Department of Justice which affirmed that the law would not diminish minority voting rights

## Congress is Again Weighing Aid for Ground Zero Rescuers

- New York Times, 4/1/09



### Supporting the 9/11 Victim's Compensation Fund & Protecting the City's Interests

Corporation Counsel Michael A. Cardozo testified before Congress in support of the James Zadroga 9/11 Health and Compensation Act of 2009. The bill would reopen the World Trade Center Victim's Compensation Fund to compensate those who were injured while responding to the attacks; limit unnecessary litigation; and provide stable funding for long-term health-care programs for those affected by the attacks.

#### Affirmative Litigation

Led the trademark litigation

#### Contracts & Real Estate

Oversaw the City's efforts and provided counsel on contract matters

#### Legal Counsel

Provided counsel on trademark law and assisted in the trademark litigation

#### Tax & Bankruptcy

Defended the City's interests in Bankruptcy Court



## LEGAL DIVISIONS

# ADMINISTRATIVE LAW

Gabriel Taussig, Chief  
Robin Binder, Deputy

The Administrative Law Division litigates on behalf of the City in challenges related to laws and regulations that were adopted to promote public health and safety, protect consumers, and enhance the quality of life in New York City. Attorneys also bring civil actions to obtain compliance with laws and regulations and prosecute violators of the City's Administrative laws in the Criminal Court.

### Protecting a Landmarked Treasure

Division attorneys obtained a settlement of \$1.1 million in civil penalties from the owners of the landmarked Windermere Hotel, one of the City's oldest apartment buildings, situated in midtown Manhattan. The settlement was reached after the City and the Landmarks Preservation Commission filed a lawsuit in March 2008 against the building's owners over their failure to keep this designated New York City landmark in good repair. In a separate agreement, the building's new owner made a commitment to maintain and repair the three-building complex, preserving this architectural gem for the future.

### Safeguarding the Visual Appeal of City Neighborhoods

Attorneys successfully defended the City in a number of constitutional challenges brought by several very large national outdoor advertising companies against the City's regulation of outdoor advertising. The decision paved the way for the City to restrict outdoor advertising throughout certain zoning districts and along the City's arterial highways, enabling the City to regulate visual clutter, preserve neighborhood character, and enhance safety and quality of life for many New Yorkers.

### Regulating Use of the City's Parade and Event Spaces

As part of a 2008 settlement in a case that challenged the Parks Department's rules regarding the use of Central Park's Great Lawn for large events, the City agreed to have an independent committee of experts write a report and recommendation analyzing the rules and policies. Division attorneys weighed in on the report, which supported the current Parks Department regulations, and helped advise the Department on these issues going forward. The Division also assisted with an appeal to a 2007 federal decision upholding the City's ban on new parades along Fifth Avenue. There are currently 15 traditional annual parades on this world-renowned route. The City won the appeal in November, an important step in preventing the popular avenue from becoming overrun and preserving quality of life for area residents.

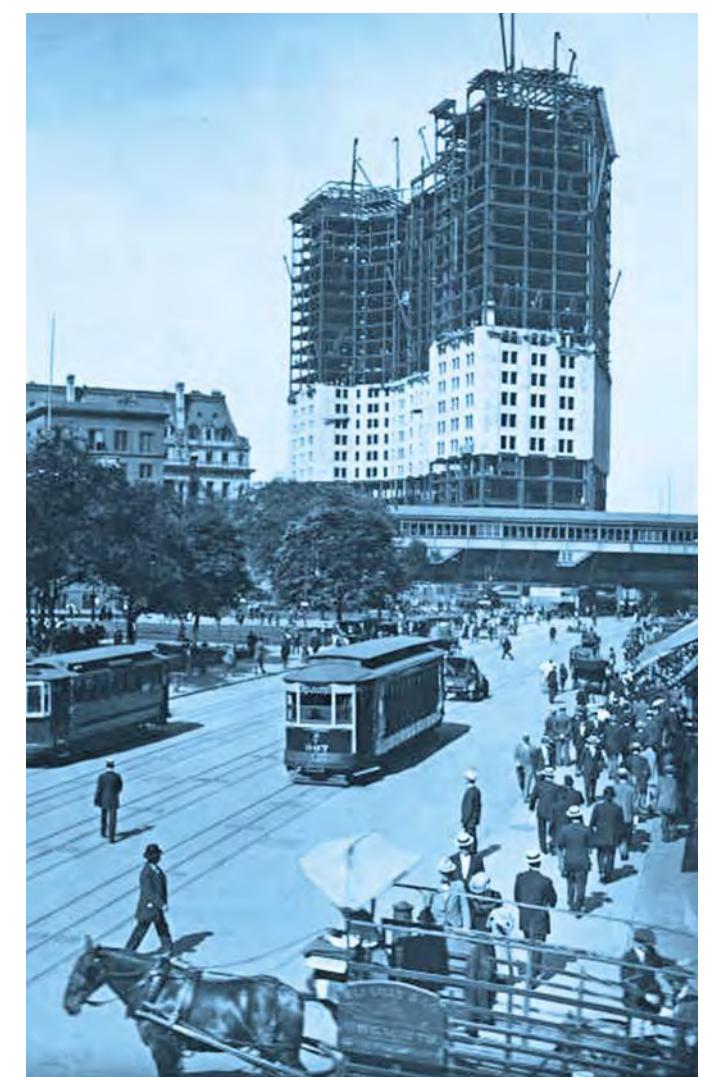
### Watching Out for Taxi Riders

The Division prevailed in a federal case representing the Taxi & Limousine Commission's policy on driver suspensions. The plaintiffs, four taxi drivers whose licenses were summarily suspended after they were arrested on criminal charges per TLC policy, raised due process claims. The court rejected the claims, and the judge noted that

the City has a strong interest in protecting the ubiquitous taxicab riders of New York City.

### Bringing Fire Code Violators to Task

The Division worked with the City Department of Investigation and the Fire Department in arresting 86 property owners, business owners and employees who failed to appear in court to respond to criminal summonses citing fire code violations. The arrests are part of a continuing effort to enforce outstanding warrants against individuals who disregard criminal summonses for fire code violations.



Above: Manhattan Municipal Building - 1910  
It's construction was involved in the "City Beautiful Movement" which arose to create civic virtue among urban populations.

Left: Manhattan Municipal Building - Present Day

# AFFIRMATIVE LITIGATION

Gail Rubin, Chief  
Eric Proshansky, Deputy

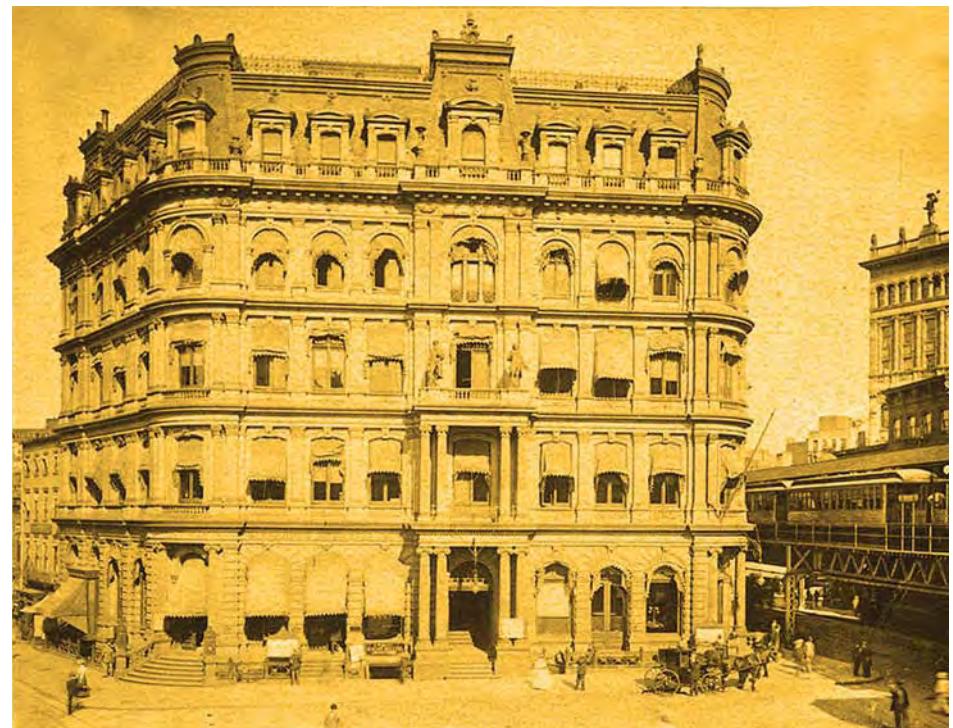
The Affirmative Litigation Division represents the City as plaintiff on a wide range of issues, including civil racketeering, fraud, nuisance, restitution, antitrust, products liability, breach of contract, insurance, and state and federal funding for government benefits and other programs. Its goal is to protect the City's treasury, the City's interests in public health and safety, and to advance the City's agenda by instituting claims and recovering monies owed to the City.

## Battle Against Illegal Guns

Attorneys continued to monitor settlement agreements with out-of-state gun dealers that have resulted in a significant decrease in the number of guns recovered in the City that are traceable to those dealers. Mayor Bloomberg's comments on the dealers' sales practices were the subject of two suits by gun dealers in their home states, which the Division continued to defend in collaboration with pro bono counsel and local counsel. One suit was dismissed and the other is still pending. Division attorneys and pro bono counsel continue to litigate with two defendant dealers who defaulted before trial, and have appealed to the Second Circuit.

## Curbing the Bootleg Cigarette Trade

In an effort to end the bootlegging of untaxed cigarettes into the City, recoup millions of dollars in lost tax revenue, and limit the adverse impacts of smoking, Division attorneys filed lawsuits against Native American retailers, New York cigarette wholesalers and Internet cigarette sellers. The court issued a preliminary injunction barring reservation retailers from selling tax-free cigarettes to anyone other than tribe members for personal



Staats Zeitung Building - 1898  
Housed the Law Department from 1874 - 1906.

use. Division attorneys continue to pursue contempt proceedings against reservation retailers who are in violation of that order, pending the appeal before the Second Circuit. The City's summary judgment motion against cigarette wholesalers remains pending.

## Obtaining Unpaid Property Taxes from UN Missions

Following the U.S. Supreme Court's 2007 ruling that federal courts have jurisdiction to hear the City's property tax lien cases against foreign governments under an exception in the Foreign Sovereign Immunities Act, the City was awarded summary judgment validating the tax liens and assessing taxes against India and Mongolia for those portions of the property used as residences for mission and consular staff below the level of Head of Mission. That judgment is now on appeal to the Second Circuit. The case against the Philippines, for taxes on those portions of a Philippines-owned building that housed commercial enterprises including a bank and airline office, was settled for \$9 million. The City also commenced suit against the Republic of Nigeria on a similar claim.

## Securing Coverage Due the City from Insurers

Efforts continue to require insurers to provide the City with the insurance coverage mandated by City contracts and permits, and to pay for covered claims and defense costs that would otherwise have to be paid out of the City fisc. In addition, the Division works with agencies to design insurance requirements for regulations, licenses and permits, and provides insurance advice, counsel and training to agency lawyers and personnel. In 2009, Division attorneys recovered over \$1.1 million from Frontier Insurance Company in Rehabilitation based on coverage that Frontier owed the City in foster care and other cases.

## Recovering the Cost of Asbestos Removal

Attorneys secured \$1.6 million for the City's final four claims against the Celotex Asbestos Settlement Trust for damage due to asbestos in schools and other buildings, bringing the total City

recovery from Celotex to \$60 million. Division attorneys researched the massive records of the Manville Trust and the Justice Department, among other repositories, unearthing material never previously used in the nearly forty-year history of asbestos litigation. To date, the Division has recovered over \$132 million in total asbestos recoveries – more than any other entity in the nation.

# Ensuring Appropriate State Funding

Division attorneys filed a lawsuit seeking an order that the State provide the City with \$600 million in financial benefits that the City contends it is owed under the federally enacted Stimulus Legislation provisions for enhanced Medicaid reimbursement. In addition, the City filed a motion for summary judgment in the Court of Claims for damages caused by the State's computer errors, which resulted in millions of dollars of charges to the City for ineligible Medicaid costs.

# APPEALS

Leonard Koerner, Chief  
Francis Caputo, Deputy  
Stephen McGrath, Deputy

The Appeals Division is responsible for nearly all appeals in matters litigated by the Law Department in state and federal court, and its cases involve virtually every area of substantive law – even including some criminal law issues. Attorneys file approximately 700 appellate briefs annually and appear in approximately 15% of the New York Court of Appeals' civil docket. Last year in that Court, we were on the winning side in 11 of the 14 cases in which we participated.

## Fighting Cigarette Dealers in the U.S. Supreme Court

The Division argued before the U.S. Supreme Court this past year, the 65th time overall that the Law Department has participated on the merits in that Court. *Hemi Group LLC and Kai Gachipin v. City of New York* examines whether out-of-state internet cigarette sellers can be sued under the Racketeer Influenced and Corrupt Organizations (RICO) Act. The City claimed that



Law Department Headquarters - Present Day

internet cigarette sellers are misrepresenting that taxes associated with internet cigarette sales do not need to be paid – resulting in lost tax revenues for the City and State. The Court determined ultimately that the City's loss of taxes did not constitute an injury under RICO, because the loss of taxes was not proximately caused by the practice, but the legal effort to collect these taxes is continuing.

## Getting the City's Share from the State

Division attorneys convinced a state appeals panel to unanimously overturn a previous ruling and determine that the State owed the City over \$28 million in Medicaid reimbursements for unlawfully intercepting federal funds.

## Testing Police for Drugs

In two different cases, the state's highest court and the U.S. Second Circuit, respectively, determined that the City has the authority to test police officers for drugs.

Division attorneys successfully argued before the Second Circuit that requiring breathalyzer tests from police officers who cause injury or death while discharging their weapon is reasonable. This policy was instituted after the tragic, fatal shooting of Sean Bell in front of a bar by undercover officers who had been drinking as part of their cover. The State Court of Appeals similarly sided with the City and determined that the Police Commissioner has the authority to choose the methodology to be used for drug testing. A police union had challenged the NYPD's expanded use of hair testing as a replacement for urine analysis.

## Protecting the City's Policies

The Division regularly defends challenges to City policies. Attorneys were successful in three recent policy challenges – two against newly instituted policies and one against an older rule.

The Second Circuit upheld the City's new health code provision that requires certain chain restaurants to post calorie information on menus and menu boards. The same court unanimously determined that a local law passed by the City Council that extends term limits from two to three terms was in accordance with state law and constitutional.

Finally, the Second Circuit upheld, as consistent with the First Amendment, a City rule prohibiting new parades on Fifth Avenue.

## COMMERCIAL & REAL ESTATE LITIGATION

Eric Rundbaken, Chief  
Jonathan Becker, Deputy  
Nancy Brodie, Deputy

The Commercial & Real Estate Litigation Division represents the interests of the City and related entities in diverse contract and real estate issues. Litigation involves a broad array of matters ranging from contracts with private companies to build the City's infrastructure to leases of important public properties. Many of the disputes handled are highly visible, with millions of dollars at stake.

### Bronx County Hall of Justice Litigation

Several Division attorneys actively litigated a huge and complex multi-party federal diversity action arising out of the construction of a new courthouse in the Bronx. Claims based on project delays, disputed extra work and defective work total over \$300 million and involve 37 construction companies, subcontractors and consultants. Twenty-eight million pages of discovery



*City Hall Park during subway construction - 1901  
In 1901, subway construction methods involved tearing up streets  
to dig the tunnel below, and then rebuilding the street above.*

### The City as a "Friend of the Court"

In 2009, the Division submitted *amicus* or friend-of-the-court briefs in 10 cases. This includes two submissions to the U.S. Supreme Court in which the final determinations supported the City's positions. The U.S. Supreme Court's decision on post-conviction DNA testing sided with the City's position that state protections are adequate and that the Court should not create a new constitutional right where none currently exists. The second case determined that donated monuments placed on public land constitute governmental speech rather than private speech, and notably, the Supreme Court even referred to the City's *amicus* brief three times in its unanimous opinion.

### Preventing Disruption of Local Heliport Operations

The Division defeated a challenge to the City's downtown heliport concession award. A losing proposer argued that he was better qualified and had submitted a better proposal than competitors for the contract. The court determined that the selection committee, comprised of employees of the New York City Economic Development Corporation, complied with the City's Concession Rules and that the City's choice was rationally based. This ensured that there was no disruption of the heliport's operations.

### Upholding the City's Procurement of Critical Engine Parts

The Division upheld the City's right to purchase critically needed genuine replacement parts for engines used in wastewater treatment plants from the original equipment manufacturer (OEM) in a claim by a competing vendor which argued that the City was required to consider non-OEM parts in making its purchasing decision. The court upheld the City's right to differentiate its replacement parts purchases between those produced by the OEM and those of a competitor based upon its experience and the potential environmental harm that could result if the parts failed.

## CONTRACTS & REAL ESTATE

Steven Stein Cushman, Chief  
Howard Friedman, Deputy

The Contracts & Real Estate Division counsels City agencies on transactional matters such as leases and contracts, and acts as transactional counsel on special projects at the request of the Mayor's Office and City agencies. Attorneys not only negotiate and draft contracts, but also approve City transactional documents and advise on processes that must be followed to enter into such agreements.

### Negotiating Labor Agreements on City Construction Projects

In collaboration with the Mayor's Office and the City's construction agencies, division attorneys negotiated Project Labor Agreements governing work rules on City construction projects that will cover \$5.3 billion in public projects comprising 32,000 construction jobs over the next four years. Collectively, the agreements, which run through the end of fiscal year 2014, will save the City nearly \$300 million over the next four years, all of which will be used for infrastructure projects that otherwise would have had to have been cut due to the economic downturn. The restored projects will create 1,800 construction jobs.

### Helping the City Procure Stimulus Funds

In collaboration with the Legal Counsel Division, attorneys worked with the Mayor's Office of Operations and the offices of the Deputy Mayors to implement the City's receipt of stimulus grants under, and in compliance with, the American Recovery and Reinvestment Act of 2009 (ARRA). ARRA funds received by the City are being used for projects ranging from rehabilitating the Brooklyn Bridge to providing nutrition programs for the elderly.

### Building the Taxi of Tomorrow

Working with the Mayor's Office of Operations and the Taxi and Limousine Commission (TLC), Division attorneys helped draft a Request for Proposals for the design and manufacture of a new vehicle that



*City Hall - Present Day*



Times Square during World Series - 1919

The first electrified advertisement appeared in Times Square in 1904.

## ECONOMIC DEVELOPMENT

**Leonard Wasserman, Chief  
Ellen Doskow, Deputy**

The Economic Development Division serves as business transactional counsel for the City on commercial, negotiated real estate development projects, as well as projects between State and City entities. The Division's work promotes the City's economy and landscape while reimagining it for the 21st century. Division attorneys work closely with City Hall, the NYC Economic Development Corporation (NYCEDC) and various City agencies on all aspects of transactions, from inception to closing, as well as administer agreements after closing.

**Making History with Atlantic Yards Development**  
The Division has been guiding the City through the progression of the \$4.9-billion Atlantic Yards project – the most ambitious real estate development project ever undertaken in Brooklyn. The project will create thousands of housing units and jobs for the middle class, stimulating the City's economy. The project includes substantial new public space, other public amenities, and a brand new arena for the NBA team currently known as the New Jersey Nets, which will be relocated to Brooklyn.

### Launching Innovative, World-Class Parks

After extensive planning work by the Division, the first portion of the new, much-celebrated, High Line Park opened over the summer. The 1.5 miles of elevated

would become the exclusive New York City medallion taxi vehicle for a period of 10 years. The TLC is seeking a taxi that is, among other things, environmentally friendly, accessible to passengers with reduced mobility, comfortable, and with an iconic design.

### Reforming the City's Bonding Policy

The Division worked on reforms to the City's bonding policy, which are intended to ease requirements and increase opportunities for small and minority-owned businesses, thereby removing barriers and encouraging growth. They will also help open up contract opportunities for these businesses of up to \$500 million a year. New York City requires companies doing business with the City to obtain performance bonds for all construction projects greater than \$500,000, but smaller contractors often have difficulty securing them. The reforms will allow the City's small businesses to participate in the City's Small Business Administration Surety Bond Guarantee Program, which helps companies secure the bonds.

### Making Capital Improvements Easier

Division attorneys worked with the Department of Cultural Affairs to develop model capital grant agreements and other relevant documents to provide financial support for the capital improvements of cultural organizations. The model documents are the core of an effort to reform a lengthy and complex process governing the capital grants to the organizations.

### Helping to Reignite Stalled Development in Downtown Brooklyn

City Point is a planned, new mixed-use development in Brooklyn, with commercial, office and residential uses – including affordable housing. The site, which is owned by the City, changed hands twice in five years, requiring multiple renegotiations of ground leases. The Division has been acting as transactional counsel to NYCEDC in the negotiations. An additional challenge has involved structuring how new federal funding will help move the project forward.

### Letting the City Play Ball

Division attorneys played a key transactional role in negotiating and documenting the deal that led to the opening of the new state-of-the-art Yankee Stadium in the Bronx, including the implementation of a new Metro North station to shuttle fans from Grand Central Station to the stadium in less than 20 minutes.

### Rebuilding A Treasured Seaside Destination

The Division has been intensely engaged in deal-making to lay the foundation for the Administration's comprehensive plan to revitalize Coney Island as well as strategizing the planning initiatives needed to upgrade the amusement and entertainment district. The project will create incentives to visit the site year-round, building a more vibrant community, with jobs and affordable housing for the neighborhood's long-term residents as well.

### Guiding Columbia-Manhattanville Development

Division attorneys have been fashioning the underlying transactional relationships to support and implement Columbia University's initiative to expand its campus north of 125th Street and west of Broadway. This expansion will create thousands of new jobs for New York City residents, in particular those in Harlem.

### Building Affordable Housing in Hunters Point South

In this southernmost tip of Long Island City in Queens, an ambitious City project calls for 5,000 new units of housing, over 60% of which will be affordable. The project will also contribute substantial new waterfront esplanade parkland. Division attorneys have been representing the City in its efforts to achieve this extensive project.

### Flushing Commons

The Division represented the City and NYCEDC in putting in place contractual undertakings for the transformation of a four-square-block municipal parking garage in downtown Flushing, Queens, into a mixed-use complex of housing, retail, commercial and recreational space development, as well as an increased amount of available parking.



Times Square - Present Day

# ENVIRONMENTAL LAW

Susan Kath, Chief  
Susan Amron, Deputy

The Environmental Law Division represents and advises the City in environmental and land-use matters involving the drinking water supply, climate change, wastewater treatment, solid waste management, energy sources, hazardous waste remediation, natural resources, and environmental review of City initiatives and private development projects. The Division plays a key role in advising the Mayor's Office on legal issues related to its sustainability initiatives – including PlaNYC and climate change planning.

## Protecting the City's Water

### *Suing ExxonMobil for Contaminating Queens Groundwater*

The City successfully sued ExxonMobil for the costs of removing the gasoline additive MTBE (methyl tertiary butyl ether) from drinking water wells in Queens, and secured a \$105 million jury verdict against ExxonMobil for contaminating the City's groundwater. Major legal publications cited this case as one of the year's most important legal decisions.

### *Protecting the City's Water Supply Upstate*

Division attorneys worked with the Mayor's Office and the Department of Environmental Protection on extensive documents outlining reasons why natural gas drilling and exploration in the shale beneath the watershed are not compatible with the operation of the City's water supply system and pose unacceptable risks to over 9 million water consumers.

## Improving Air Quality and Saving Energy

### *Greening the Taxi Fleet*

Although a federal court determined that the incentive program the City created to encourage taxicab owners to purchase hybrid and clean fuel cars is pre-empted by federal law, a state court ruled that the City does have the authority to use taxicab lease rates as a means of implementing financial incentives. The City's appeal in the federal lawsuit is pending before the Second Circuit.

### *Solid Waste Management*

Attorneys successfully defended a third challenge to the City's plan to construct a new marine waste transfer station at East 91st Street. The waste transfer station is a critical component of the Mayor's comprehensive 20-year solid waste management plan for the City. Replacing the existing truck-based waste export system with one that uses barges and railways in order to decrease truck traffic, the solid waste management plant will enable Manhattan to manage more of its own waste rather than sending it to other boroughs or New Jersey.

### *Supporting Land Use Initiatives*

The Division secured the dismissal of a federal lawsuit brought against the City for lack of services in Willets Point, Queens. The decision recognized the inherent difficulty in redeveloping the area in a piecemeal fashion

and that the City's sweeping plan to redevelop Willets Point was overwhelmingly approved by the City Council. The Court noted that the plaintiffs were merely interested in substituting their own plan for the area in place of the City's detailed development plan.

The Division also successfully defended challenges to the East Village/Lower East Side rezoning and the East 125th Street Project, a rezoning and redevelopment plan in East Harlem. Additionally, Division attorneys are part of the City team advising the Mayor and City agencies on the proposed listings of the Gowanus Canal and Newtown Creek on the National Priorities List pursuant to the federal Superfund law.



Female Taxi Driver - 1924  
In 1907, New York Taxicab Company, the first taxicab company in New York City, imported 600 gasoline-powered cars from France.

# FAMILY COURT

Laurence Busching, Chief  
Angela Albertus, Deputy

The Family Court Division is divided into two subunits – the Juvenile Crime Prosecution Unit and the Interstate Child Support Unit. The Interstate Child Support Unit represents out-of-state petitioners seeking child support from New York City residents. The Juvenile Crime Prosecution Unit, which houses the Major Case Unit and the Sex Crimes Prosecution Unit, prosecutes juveniles accused of committing crimes. In cases where the Family Court finds guilt, attorneys then seek case dispositions that balance juveniles' needs and best interests with public safety concerns. Attorneys handle a wide variety of cases, including assaults, robberies, weapons possession, drug offenses, sex offenses and homicides.

### **Success with the Alternative to Sentencing Initiative**

The Family Court Division strives to help youths not deemed a significant risk to public safety to receive rehabilitative services from community-based organizations. One example is Ronel M., who was first arrested for trespass and larceny at the age of 15. He failed to comply with the terms of probation and continued to test positive for marijuana. It was later discovered that Ronel M. had lost a brother six months prior to his court involvement. Upon learning that Ronel M. had been rejected from several community-based programs, the Division's social worker made contact with a specialized multi-systemic therapy program. The program carefully crafted a treatment plan to address the family's needs, as well as Ronel M.'s individual needs, which included his substance abuse, truancy, grief and negative peer selection.

### **Interstate Child Support Unit**

In 2009, the Interstate Child Support Unit received over 6,200 new cases, secured 1,640 final orders of child support, and established paternity in 638 cases. The Unit also had success in collecting large lump sums of money on behalf of custodial parents, including one \$90,000 payment. Unit attorneys also defended against 1,885 petitions from non-custodial parents to reduce support, resulting in less than half of these requests being granted. On the other hand, for the custodial parents who sought relief from the courts, 71% were granted the requested remedy. The Unit, on behalf of New York City residents, also filed 212 cases in 29 other states, the District of Columbia, and a number of foreign countries.

Recently, the Unit represented a Pennsylvania mother on a petition to increase a \$25-per-month child support order entered in 1999 when the child's father was a law student. For nearly a decade, the now 11-year-old child's father has been gainfully employed at large New York City law firms with an annual salary of more than \$100,000. The Unit attorney filed a motion to have the sought increase in child support retroactively apply to the date the



New York City hybrid taxi - Present Day

father obtained employment. The Family Court ruled in the mother's favor and granted both the upward modification request and the retroactivity request, enforcing a payment of \$884 per month retroactive to the year 2000. The amount of the back child support owed by the father was determined by the Court to be close to \$50,000.

### **Prosecuting Brothers Involved in a Series of Robberies**

One of the most notorious recent series of cases handled by the Division was profiled in several local news articles. Brothers Juan G. and Danny G. committed more than 25 residential burglaries in at least three boroughs over the course of several months. The Division's work involved not only investigating and prosecuting the brothers' cases, but also working with victims – many of whom felt severely violated by these crimes.

### **Successful Prosecution in a Disturbing Animal Abuse Case**

In a case that illustrates the balance between protecting the public and rehabilitating juveniles, the Division handled the prosecution of Whitney B., a

14-year-old girl who was charged with Aggravated Animal Cruelty and Burglary. Whitney B., along with a 17-year-old female friend, broke into and vandalized an acquaintance's apartment. While there, Whitney B. also brutally burned the acquaintance's pet in an oven, resulting in the pet's death. After pleading guilty, Whitney B., who was already on probation on a prior unrelated matter, was sentenced to up to 18 months in a juvenile facility, the maximum sentence permitted under the law for this offense.

### Bringing Juvenile Prosecutors Together

The Division hosted the first Statewide Management Conference for Juvenile Delinquency Prosecutors this year at the New York City Law Department. Citywide managerial and supervisory-level prosecutors from all five boroughs and 12 other counties met to discuss the current state of the practice and to share ideas on how to improve the juvenile justice system. The conference encompassed the most compelling issues that juvenile prosecutors are presently faced with, including gang trends, drug and gun possession issues, and sex crimes, as well as the State's current approach towards juvenile delinquents and how to influence policy and legislation which can ultimately improve the practice.

## GENERAL LITIGATION

Thomas Crane, Chief  
Jonathan Pines, Deputy  
Marilyn Richter, Deputy

The General Litigation Division defends the City and its agencies in lawsuits challenging policies and practices concerning important programs in such varied fields as education, health care, public assistance benefits, prison conditions, foster care and election law. Many of these cases are brought as class actions in federal court, and present significant and often novel issues of statutory and constitutional interpretation.

### Addressing the Needs of Handicapped Inmates

Division lawyers settled a federal class action brought by inmates claiming that various conditions at the infirmary facility on Rikers Island violated the constitutional and ADA rights of disabled inmates, particularly those who are utilizing wheelchairs or are visually impaired. In settling the case, the City agreed to make a variety of physical alterations to the facility, train staff in order to facilitate access for disabled inmates, and pay modest damages to the named plaintiffs in the case.

### Settlements of Challenge to Hospital Conditions

The Division settled two federal lawsuits challenging conditions in the psychiatric emergency room and psychiatric inpatient unit at Kings County Hospital. The first was a class-action lawsuit alleging the existence of widespread inadequate and improper conditions at those facilities. During the course of litigation, the U.S. Department of Justice undertook a year-long investigation into the care and treatment of patients in those facilities. According to the DOJ investigation, there were pervasive deficiencies. After extensive negotiations, we reached a time-limited settlement with both the class plaintiffs and the DOJ requiring a wide array of corrective measures.



New York City Double-Decker Bus - 1896  
City involvement with surface transit in New York City began in 1919.

the consent decree concerning the provision of special air-conditioned housing for inmates deemed susceptible to high heat conditions.

### FOIL Litigation Concerning the NYPD

Over the past year, the Division has represented the NYPD in a number of cases brought by the New York City Liberties Union under the New York Freedom of Information Law (FOIL). The NYCLU has sought information concerning a variety of police practices, including the database recording "stop and frisk" incidents; the race of persons shot by police officers in gunfights or arrests; the plans for the Lower Manhattan Security Initiative (LMSI) program being employed to guard against terrorism in the heart of the City's government and commercial center; and materials concerning transportation of students to psychiatric units by police officers.

In defending these cases, the City has been called upon to balance the interest for governmental transparency with the special concerns of a law enforcement agency. The lawsuits have had various outcomes. In the case of the LMSI, we successfully defended the right to withhold

operational and closely related documents. The case involving the request for information concerning the race of persons who had been shot was resolved when the NYPD resumed its earlier practice of publishing that data. The request concerning student transportation was withdrawn. The City has appealed the Court's order that the NYPD produce information concerning persons shot at because such data has never been compiled.

### Commission to Investigate 9/11 Attack

In mid-2009, various groups petitioned to place a special referendum on the November ballot. If passed, that referendum would have amended the City Charter to add a local law creating an independent commission to investigate the events of September 11. In addition to disputing the adequacy of the number of signatures on the petition, the City also asserted that a referendum seeking the creation of a local commission to conduct such an investigation was invalid as it exceeded the proper scope and purpose of the referendum process. The Court dismissed the case concluding, among other matters, that jurisdiction for such an investigation properly rests with the federal government.

## LABOR & EMPLOYMENT LAW

Georgia Pestana, Chief  
Paul Marks, Deputy

The Labor & Employment Law Division represents the City as employer of over a quarter-million workers. The Division handles a variety of matters including First Amendment retaliation; gender, race, age and disability discrimination; and civil service law issues. Attorneys have successfully litigated cases brought against every City agency, as well as lawsuits brought against high-ranking City officials.



New York City hybrid-electric bus - Present Day

### Defending FDNY Hiring Practices

Attorneys prepared Mayor Bloomberg for deposition in a lawsuit brought by a group of firefighters who claimed that civil service tests had a discriminatory impact on Black and Hispanic applicants for firefighter positions. Although the tests were last administered in 2002 and the FDNY implemented a recruitment campaign in 2006 that attracted a record number of minority applicants, the group insisted on taking the Mayor's deposition to explore the level of the Mayor's knowledge and involvement in the Fire Department's hiring practices.

## Allowing Schools to Fire Teachers with Poor Performance

Improving the quality of public education in New York City through increasing accountability at all levels has been one of the key initiatives of the Bloomberg Administration. Although teachers and principals have significant job protection under State Law and collective bargaining agreements, the Division has been successful in defending decisions by the Chancellor to terminate teachers and administrators who perform poorly or engage in misconduct.

In addition to defending dozens of cases challenging teachers who are dismissed after receiving three unsatisfactory ratings, the Division also defends more creative claims by teachers challenging their terminations.

Division attorneys prevailed at trial in *Ngemi v. Board of Education*, a case in which the plaintiff, a former biology teacher, claimed that his termination violated the First Amendment because he was terminated for disregarding the science curriculum and, instead, instructing students based on his own views of genetics.

In *Matson v. Dept. of Education*, Division lawyers obtained dismissal of a case by a music teacher terminated after it was discovered that she was improperly claiming sick leave in order to work as a conductor of a symphony orchestra.



Elevated railroad in New York City, called "suicide curve" at the time - 1896  
The first underground line of the subway opened on October 27, 1904,  
almost 35 years after the opening of the first elevated line in New York City.

## Ensuring that Police Officers are Fit for Duty

The Police Department correctly demands that its officers be fit for duty at all times. Periodically, the NYPD updates its policies and practices to further ensure the safety of its members and the public. However, the NYPD's efforts in this regard are sometimes met by resistance from individual officers or unions representing members of the department, and they challenge the NYPD's initiatives in court.

When the NYPD sought to change the method of conducting random drug tests of its employees from urine testing to hair testing, the unions representing almost all the ranks of the uniformed forced demanded that the City negotiate with them over the change in testing methodology. The issue was litigated all the way to the New York Court of Appeals – the state's highest court – which ultimately decided that the City was not required to negotiate over the change in testing methodology.

Similarly, when the Police Commissioner issued a new regulation requiring that all police officers who are involved in a shooting incident immediately submit to a breathalyzer test to determine whether they were under the influence of alcohol, the unions representing all ranks of police officers sued alleging a violation of their constitutional rights. The Division successfully opposed their demand for a preliminary injunction to halt the new regulation's implementation.

## LEGAL COUNSEL

Stephen Louis, Chief  
Martha Mann Alfaro, Deputy

The Legal Counsel Division advises the Mayor, other elected officials and City agencies on a wide range of municipal law issues, and drafts city and state legislation. Recent efforts have resulted in the adoption of new construction safety protocols, energy standards, penalties for imitation firearms, and pedicab regulations.

### Navigating Political Controversies in Albany

The Division worked for weeks on a host of issues arising from the summer's monthlong political stalemate in the New York State Senate. The City's extensive legislative agenda in Albany required a thorough understanding by City officials as to legal issues regarding legislative majorities, special sessions, and the appointment of a Lieutenant Governor.

### Education Reform

The Division assisted the Department of Education as it successfully sought a renewal, with some changes, of school reform legislation that permitted mayoral control of the schools along with other reforms.

### Aiding Technology Progress

Division attorneys have supported the growth of the City's highly valued technology assets. The Division worked on a request for proposals to find a qualified vendor to assist the City in applying to obtain the ".nyc" top-level domain extension and, once secured, to manage and operate this highly lucrative web address. Similar to the ".com" extension, the ".nyc" domain extension will generate revenue, support local businesses and promote tourism. Attorneys also assisted with the "BigApps" competition, allowing software

developers to commence work on mobile applications using City datasets. In addition, the Division worked on the launch of nycgo.com, an online resource for exploring New York City – including an interactive calendar of citywide events.

### Legislative Efforts

The Division works closely with City Hall on federal, state, and city legislative issues – both in drafting and advising on legislation. This year, attorneys handled countless matters including those relating to:

- Increasing safety measures at construction, abatement and demolition sites throughout the City
- Lowering greenhouse gas emissions from existing New York City buildings and creating new energy-sector jobs
- Establishing new regulations for brownfield cleanup
- Enforcing hotel taxes on internet hotel bookings
- Licensing for and regulation of pedicabs
- Providing free language assistance services in pharmacies
- Making graffiti removal more efficient and cost-effective for property owners
- Prohibiting the sale of certain flavored tobacco products, which attract younger smokers
- Increasing regulation of public authorities



An R160A model train - Present Day

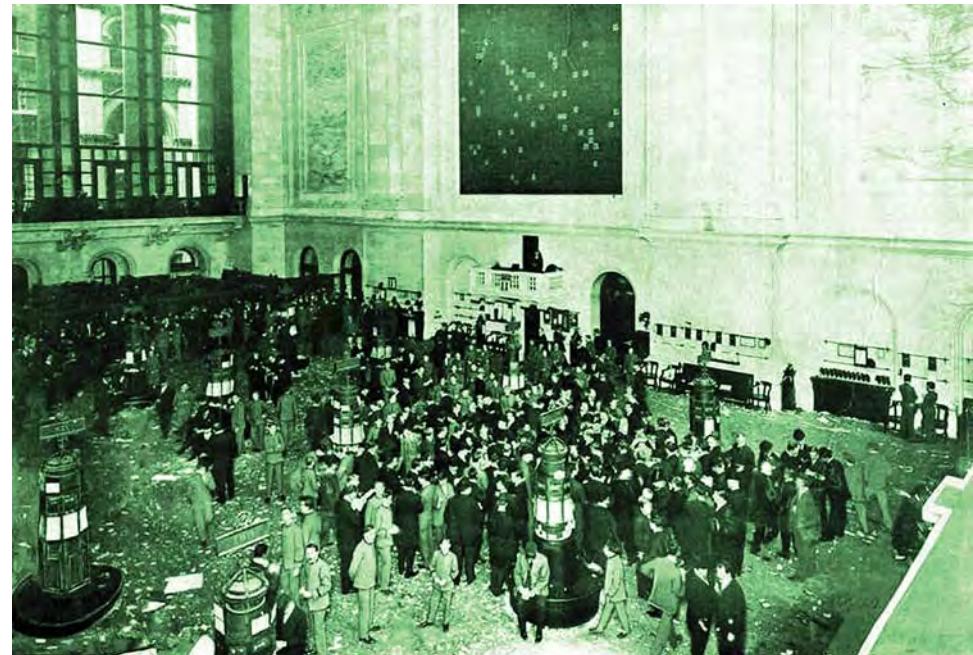
# MUNICIPAL FINANCE

Albert Moncure, Jr., Chief  
Olivia O'Neill, Deputy

The Municipal Finance Division serves as counsel to the City on all bond transactions. Funds raised from issuing bonds have been used on projects ranging from water pollution control to the Nets sports arena in Brooklyn to new school construction. Each year, the Division oversees billions of dollars in financial transactions.

## Build America Bonds

Division attorneys have played a major role in the issuance of Build America Bonds (BABs) authorized by the American Recovery and Reinvestment Act of 2009. This new type of non tax-exempt municipal bond can be issued for purposes very similar to those for which traditional tax-exempt municipal bonds are issued. Instead, the federal government provides a direct subsidy to the issuer in the amount of 35% of the interest cost of the borrowing. As a result, while the costs to the issuer remain similar to the costs of tax-exempt bonds, access has been created to a new universe of buyers who do not need tax-exemption and in the past had not bought municipal bonds. In addition, because many municipal issuers have sold BABs this year instead of traditional tax-exempt bonds, there is less supply in the tax-exempt market and therefore lower tax-exempt interest rates. The City and the New York City Transitional Finance Authority have issued, respectively, \$800 million and nearly \$690 million of BABs in 2009. Since these bonds are a new form of security, the Division addressed novel tax, pricing and other issues in connection with their sale and issuance.



New York Stock Exchange Floor - 1908

The first central location of the Exchange was a room, rented in 1817 for \$200 a month, located at 40 Wall Street.

## Helping the City Finance Water Pollution Control Projects

The Division participated in the issuance of interest-free bond anticipation notes by the New York City Municipal Water Finance Authority to the New York State Environmental Facilities Corporation (EFC). Pursuant to this transaction, the EFC will advance up to \$217 million received from the federal government via the American Recovery and Reinvestment Act to the City for construction of water pollution control projects, with an additional incentive if the City completes the projects on schedule.

## Representing the City's Interests in the Nets Basketball Arena Development

Attorneys worked with the Economic Development Division to represent the City and the New York City Economic Development Corporation in connection with the successful tax-exempt financing for the professional basketball arena for the Nets basketball team. The arena will be located in a major mixed-use development project planned for a 22-acre site in the Atlantic Yards Terminal area of Brooklyn. The financing participants included the Empire State Development Corporation as owner of the project site and public developer of the project, as well as the private developer and a potential investor in the arena and the team.

## Helping to Develop a Municipal Market Access System

Division attorneys assisted the federal Municipal Securities Rulemaking Board (MSRB) in the development of its Electronic Municipal Market Access System (EMMA). EMMA was developed by the MSRB for the purpose of providing free centralized access to continuing disclosure, trade activity and other information with respect to municipal securities. At the Office of Management and Budget's request, Division attorneys participated in testing the EMMA system and provided feedback and commentary on its operation prior to and after its launch in July 2009.

# PENSIONS

Inga Van Eysden, Chief  
Carolyn Wolpert, Deputy

The Pensions Division represents the City's five pension funds in litigation challenging individual and class-wide benefit determinations, and provides pension-related counseling and advice to City agencies. With close to 600,000 active and retired members and approximately \$100 billion in assets, the City funds are cumulatively one of the largest public pension funds in the country. Division attorneys draft and comment on proposed legislation; assist in the implementation of new laws; and in conjunction with outside counsel, represent the City funds in securities fraud cases.

## Fighting Securities Fraud

With outside counsels' assistance, attorneys investigate and prosecute securities fraud actions seeking to recover losses that the funds have sustained while investing assets in various companies.

## Countrywide Financial Corporation

Representing the New York City pension funds in their capacity as lead plaintiff with the New York State Common Retirement System, Division attorneys continued work on the class-action lawsuit against Countrywide Financial Corporation – formerly the largest mortgage lender in the United States. On behalf of the class, the City and the State assert claims against Countrywide's former executives, along with 50 other defendants that include Wall Street's largest investment banks, for securities law violations and fraud that led to significant losses by Countrywide shareholders.

## Wachovia Corporation

The New York City pension funds serve as lead plaintiff in the class action securities fraud complaint filed against Wachovia Corporation, one of the nation's

largest financial service providers. The lawsuit alleges that Wachovia issued false and misleading statements regarding its exposure to subprime mortgages, leading the company's stock to trade at artificially inflated prices.

## Legislative Efforts

Pension costs for retirees is one of the largest budget allocations for the City, and Division attorneys are actively engaged in analyzing and drafting legislative proposals that would reduce the City's exposure to these costly benefits. The Division also regularly assists the City pension funds in the interpretation and application of various laws, including laws designed to afford benefits to City workers disabled as a result of World Trade Center activities.

## Settlement With Teachers Approved

The City's settlement of a lawsuit which challenged the Teachers' Retirement System's calculation of pension benefits under the teachers' 20-year pension plan was approved by the Court this past year. The \$160 million settlement could potentially affect 30,000 retirees and 5,000 active members.



New York Stock Exchange Floor - Present Day

# SPECIAL FEDERAL LITIGATION

Muriel Goode-Trufant, Chief  
Heidi Grossman, Deputy  
Frances Sands, Deputy

The Special Federal Litigation Division defends the City and its employees in civil rights cases brought in federal court against law enforcement officials, including police officers, correction officers and prosecutors. Claims often challenge a judgment made by an individual police or correction officer in performing his or her duties; Police Department policies as to how best to secure public safety; or Department of Correction policies regarding the care and custody of individuals detained by the criminal justice system. Pending cases include a wide range of factual circumstances from the policing of large-scale public events to the justification for an individual arrest. The legal principles which govern case outcomes are part of an ever-evolving body of constitutional law set forth in decisions by the U.S. Supreme Court and other federal courts.

## Demonstration Cases

Division attorneys are handling approximately 80 cases related to demonstrations, including two class-action lawsuits. Most of these cases relate to demonstrations occurring during the 2004 Republican National Convention. The remaining cases are varied, including cases concerning abortion clinic protests, the 2003 U.S. Out-of-Iraq March, and Critical Mass bike rides.

## Complex Litigation

The Division also has an array of complex litigation, including, but not limited to, several class actions, which implicate policies ranging from stop-and-frisk activities, arrest charges, interrogations, grand jury proceedings, disclosure of exculpatory evidence, use of DNA evidence, searches of arrestees and detainees to training and discipline of City personnel.

## Trial Victories

Division attorneys tried an array of cases in 2009, including the following:

### A Balloon Artist's Suspicious Device

The Division prevailed in an excessive force lawsuit filed against three NYPD officers by a Central Park balloon artist who was arrested after leaving an unattended, suspicious device in a local café and disobeying police commands when later confronted about it. Although the object was found to be harmless after an NYPD bomb squad inspection, the Court found that it was feasible for police to reason that the man was conducting a "test run" to determine how authorities would react to a suspicious-looking device – a strategy often employed by terrorists in planning attacks and training operatives.

### Police Case Following a Tense Encounter

Division attorneys were victorious in a trial concerning the shooting death of a man who was holding a gun to the head of a

police lieutenant. Police had responded to a report of a man with a gun. The armed man fought with police and held a gun to the head of a lieutenant, whereupon a police sergeant at the scene shot the man. A confidential informer who witnessed the incident unfold later testified at trial.

### False Arrest Claims After a Man Assails a Traffic Agent

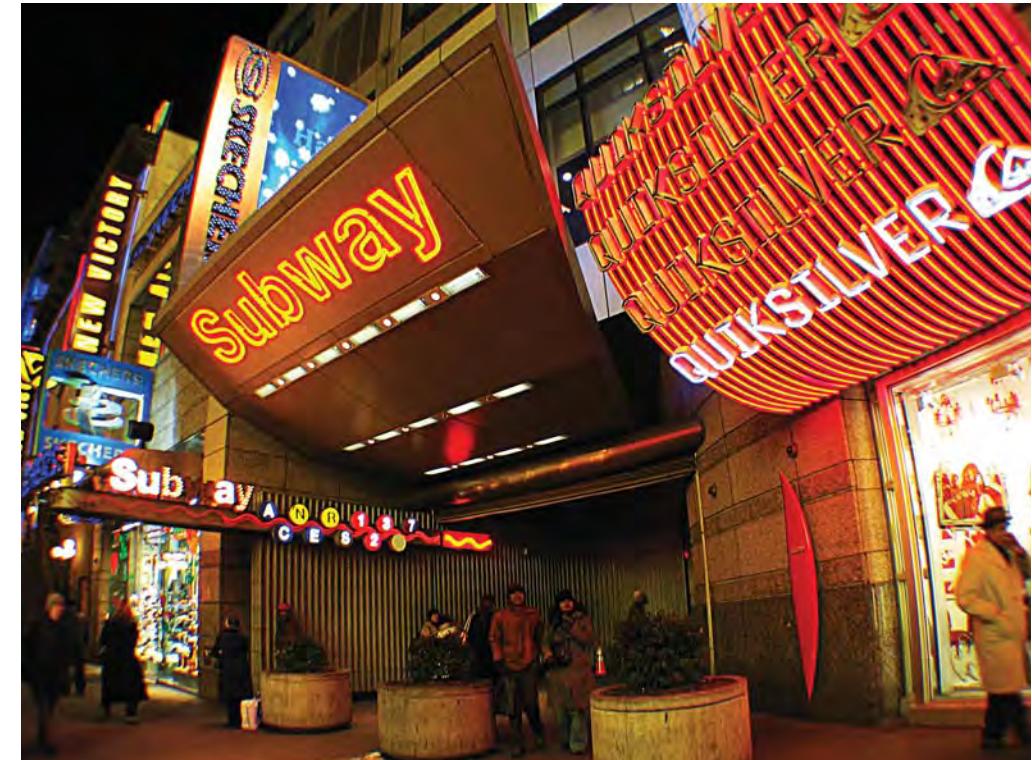
The Division won a trial in which the plaintiff, a full-time sanitation worker with the Department of Sanitation, alleged that he was falsely arrested and maliciously prosecuted for assaulting a traffic agent. The plaintiff, who had a two-year-old child in the car, refused to move at a traffic agent's request before assaulting the agent at the scene. He was arrested and claimed chronic psychological injuries as a result of the incident. After deliberating for less than an hour, the jury found for the City.



Times Square subway entrance - 1921  
Formerly named Longacre Square, Times Square was renamed after the Times Building in April 1904.

## Student Claims Excessive Force

In another trial win, a Ph.D. student claimed excessive force after attempting to run from police who had discovered that his friend was spray painting a building. The plaintiff claimed that officers treated him roughly. However, Division attorneys presented a different account, with the officers testifying that the plaintiff fell while fleeing. The plaintiff was confronted with a recorded statement he gave to the Civilian Complaint Review Board days after the incident in which he said that he had tripped. Medical testimony was consistent with this account as well. A jury found for the City.



Times Square subway entrance - Present Day

# TAX & BANKRUPTCY LITIGATION

Rita Duman, Chief  
Vincent D'Orazio, First Deputy  
Lisa Bova-Hiatt, Deputy

The Tax and Bankruptcy Litigation Division plays a vital role in protecting the City's fiscal health by defending court challenges to real property tax assessments, and in advancing initiatives to modernize the City's infrastructure and enhance the quality of life for City residents. The Division actively acquires property for a variety of projects such as completing the City's third water tunnel, creating parks, constructing libraries, and building affordable housing. Further, the Division litigates various tax issues, matters related to property acquisition, and defends the City's interests in bankruptcy proceedings.

## Unanimous Qui Tam Supreme Court Ruling

The Division prevailed in a matter stemming from a lawsuit brought by an individual against the City under the federal False Claims Act. The plaintiff asserted that the City Charter provision which requires City employees who reside outside of the City to pay a residency waiver fee in lieu of City income tax somehow deprived the federal government of tax revenue. The *pro se* plaintiff appealed the district court's decision against him after the 30-day deadline. The plaintiff asserted that since he was in effect acting as a private attorney general on behalf of the government that the 60-day deadline should apply instead. The issue of the appropriate deadline to apply had divided the Circuit Courts of Appeal. The U.S. Supreme Court unanimously ruled in the City's favor and adopted all of the City's arguments.

## Defending the Atlantic Yards Land Use Improvement and Civic Project

Division attorneys submitted an *amicus* brief defending the plan to acquire land in Brooklyn by eminent domain as part of a 22-acre land use improvement project. The City had previously prevailed in a federal lawsuit challenging the same project. The New York State Court of Appeals rejected claims that the decision to condemn the property violated the State Constitution, and held that the State accords government broad power to condemn blighted areas for redevelopment.

## City Prevails on Property Appraisal Methodology

Division attorneys successfully defended a real property appraisal methodology in a case concerning a 35-story office building on Park Avenue between East 50th and 51st Streets. Known as the Plaza District, this location

is considered a premier office address both nationally and internationally. The building's owner acquired the property out of bankruptcy in 1992 for \$130 million, and gutted and rebuilt the property. The owner challenged City assessments for taxable years 1996/97 through 2003/04. The building was partially owner occupied throughout that period. At trial, the City's appraiser effectively rebutted the owner's contention that the existence of owner-occupied space on the date of valuation depressed market value. The trial court sustained the City's position in all years except for one in which a minor modification was made. The Appellate Division, First Department upheld the City appraiser's methodology.

#### District Court Holds RLUIPA Does not Apply to Condemnation Proceedings

The Division handled a case involving a group of plaintiffs who identified themselves in part as a religious congregation and school. The plaintiffs alleged a number of violations, including violations under the Religious Land Use & Institutionalized Persons Act (RLUIPA) in relation to the condemnation of property in Brooklyn. They also argued that the City should issue a special-use permit for the construction of a Yeshiva on the property adjacent to the property condemned by the City. Division attorneys

successfully sought dismissal of the case. In its dismissal, the Court held that RLUIPA does not apply to eminent domain proceedings. Furthermore, the plaintiffs' claim regarding an alleged RLUIPA violation based on the denial of their special-use permit application was barred by the applicable four-year statute of limitations.

#### Defending Against Broad Interpretation of A Hotel Tax Exemption

The Hotel Room Occupancy Tax (HROT) contains an exemption for personal residents, or occupants of a hotel room or rooms for at least 180 consecutive days. A provision of that exemption was challenged in a recent case handled by the Division. The petitioner in this case, American Airlines, contracted with hotels to rent rooms over a period of time. The company argued that since it was a permanent resident with regard to at least one room that it should receive the exemption for any additional rooms, whether or not those additional rooms were also occupied for 180 consecutive days. The New York City Tax Appeals Tribunal sided with Division attorneys in rejecting this expansive reading of the exemption. The Tribunal also rejected American Airlines' alternative argument that since it had an ongoing written letter of understanding with the hotels as to procedures and rates, it was in fact a long-term occupant.

## TORT

Fay Leoussis, Chief  
Ellen Lombardi, First Deputy

Steven Levi, Deputy  
David Santoro, Deputy

With 200 attorneys and 200 support staff, the office's largest division defends the City against over 6,000 new personal injury and property damage cases annually. The Division maintains offices in all five boroughs and has special subunits that focus on specific issues such as risk management, catastrophic injuries, and toxic torts.



South Street Seaport - 1834

In 1810, Peter Schermerhorn began construction of a block-long series of conjoined buildings, now known as Schermerhorn Row, which intended to serve as leased spaces for merchants of differing but compatible trades.

#### A Proactive Approach With Motions

Division attorneys take every opportunity to gain a dismissal pre-trial through affirmative motion practice. In FY 2009, the Division made 2,200 affirmative motions and achieved an 80% win rate.

#### An Impressive Record of Verdicts

Over 500 tort cases were sent out to trial in FY 2009. Garnering 66 victories from 115 jury verdicts in FY 2009, the Division's overall success rate at trial was an impressive 57%. Of the 49 plaintiffs' verdicts, 10 were for \$50,000 or less. The Division's cases span a wide range of issues, including complex questions of governmental and qualified immunity; matters testing the boundaries of duty and foreseeability; interpretation and application of federal and state civil rights laws; the extent of property interests and the scope

of recovery for violation of those interests; and more straightforward negligence cases involving trip-and-falls on sidewalks, injuries sustained in motor vehicle accidents, and accidents that occur in City-owned buildings.

#### Win in a Complex and High-Profile Building Fire Case

A recent motion victory in the One New York Plaza case demonstrates the array of interesting legal issues that arise in the Division. The case, handled by the Division's Special Litigation Unit, involved an explosion in which several firefighters were injured and significant property damage occurred. A group of 21 firefighters and two civilians sued the building owner, the general contractor, and a subcontractor for starting a fire in the sub-basement of the building. Eleven firefighters brought direct actions against the City, and the defendants sued the City as a third party for causing an explosion by applying water to extinguish a titanium fire.

The fire started when building contractors attempted to dismantle a chiller unit for the building's air conditioning system. The chiller unit contained hundreds of saline-filled titanium rods, which contractors removed using acetylene torches; throughout the demolition, this had generated small but manageable fires. On the incident date, the workers were unable to put out a new fire with available resources. The FDNY responded to the scene with several companies and

ranking officers. There was confusion as to whether to use water to douse the fire. The plaintiffs argued that putting water on the fire violated an allegedly immutable rule contained in the HazMat guide used by firefighters, which dictated that water should not be used on fires involving titanium and similar heavy metals. They also argued that the City violated its duty to provide a workplace free from recognized hazards by violating the allegedly immutable rule. However the City contested that the HazMat rule was a general guide subject to specific conditions of an incident, and that the rule in question did permit the use of water on fires involving titanium if "copious" amounts of water were available. The Court found in the City's favor, deciding that the rule alleged was not immutable.

#### Reducing Claims and Lowering Payouts in Sidewalk Trip-and-Fall Cases

The Division continues to make significant progress in its efforts to settle meritorious claims earlier in the litigation process. The Division reduced the number of its pending cases 11%, from 20,087 cases in FY 2008, to 17,817 in FY 2009. The Division also significantly reduced the amount paid to resolve cases arising from falls on City sidewalks – from \$54.1 million in FY 2008 to \$39 million in FY 2009, a 28.8% reduction. This decrease is attributable to the efforts of attorneys in identifying and making motions and to the 2003 sidewalk law that shifted liability for sidewalk trip-and-fall cases to adjoining commercial owners in many instances.



South Street Seaport - 2010

# WORKERS' COMPENSATION

John Sweeney, Chief  
Mindy Roller, Deputy

The Workers' Compensation Division represents the City and related entities at all hearings, trials and appeals before the New York State Workers' Compensation Board. Additionally, the Division administers all aspects of claims by covered employees who are injured on the job or incur an occupational disease. Claims involve nearly every conceivable medical condition, including work-related psychiatric diagnoses, respiratory ailments, heart conditions, and orthopedic conditions. The Division strives to provide employees with all the medical and wage replacement benefits to which they are entitled, while objecting to and, if necessary, litigating unwarranted claims.

New York enacted its workers' compensation statute to address the inequities historically existing among employers and employees with regard to workplace injuries. The New York statute operates on the premise of a tradeoff. Employers assume all liability for injuries arising out of, and in the course, of employment – regardless of fault. Workers receive limited wage replacement benefits for lost earning capacity, and are entitled to have all related and necessary medical costs paid. In exchange, employees are prohibited from suing employers for personal injuries.

New York City is a self-insurer of its workers' compensation obligations pertaining to all covered City employees. Employees not covered under this statute, but by union

contracts, include uniformed police officers, firefighters and uniformed sanitation workers.

#### **Significant Matters from 2009 Include:**

- Receiving and indexing over 14,500 new claims
- Representing the City at over 15,000 hearings, trials and appeals before the N.Y. State Workers' Compensation Board
- Paying over \$165 million in wage replacement benefits and medical costs to injured employees
- Processing over 220,000 medical bills
- Obtaining revenue recoveries in excess of \$9 million from various sources, including state funds, lien satisfaction and insurance arbitration



Bethesda Fountain in Central Park - 1900

The fountain, unveiled in 1873, is topped by a sculpture called "Angel of the Waters," by Emma Stebbins. She was the first woman commissioned to create art in a city park.

## SUPPORT DIVISIONS



## ADMINISTRATION

Malachy Higgins, Chief  
Anthony Johnson, Deputy

The Administration Division oversees business operations for the Law Department and is responsible for all expenditures of funds, collection of revenue and fees, procurement rules compliance and personnel processing. Staff also provide general administrative oversight and development of internal policies, rules and regulations. Finally, the Division currently stores 170,000 boxes containing inactive case files, and is responsible for ensuring the physical maintenance of ten citywide Law Department offices in addition to the Kingston, N.Y. office which totals a half-million square feet of space.

Each year, the Division handles over 38,000 paychecks; hundreds of personnel actions; thousands of payments for expert witnesses; 4,000 requests for court reporters and depositions; and hundreds of individual procurements. Moreover, it deposits money recovered in lawsuits on the City's behalf. The Division's efforts continue to focus on expansion and renovation of the Law Department's facilities, speedy responses to staff changes, and automation of systems and processes to increase the Department's efficiency. The Division also provides oversight and advice to other Department enterprises, such as information technology initiatives, equipment upgrades and management evaluations.



*Above:* Brooklyn Bridge - 1905

On May 17, 1884, P. T. Barnum helped to squelch doubts about the bridge's stability when one of his most famous attractions, Jumbo, led a parade of 21 elephants over the bridge.

*Left:* Brooklyn Bridge - Present Day

### Highlights of Accomplishments from 2009:

- Expanded the electronic routing of invoices to the General Litigation and Labor & Employment Law Divisions.
- Finalized the Guidelines for Outside Counsel Contracts.
- Completed work with the Office of Emergency Management that led to the creation of the Law Department's Continuity of Operations Plan. This work identified the Department's essential services in response to Mayor Bloomberg's Executive Order No. 107 which is aimed at ensuring that the City essential services remain operational during citywide emergencies.
- Increased work space capacity at 52 Duane Street.
- Completed plans with the Criminal Justice

Coordinator's Office to increase space capacity and improve the layout of our Bronx Family Court office.

- Secured capital funding to enhance computer response and connectivity to further facilitate the migration of computer assets from 100 Church Street to Metrotech in Brooklyn.
- Secured capital funding to purchase shelving to accommodate an additional 86,000 boxes at our off-site storage facility. This increase will bring our total storage capacity to 256,000 boxes.
- Implemented procedural changes to facilitate internal processing under the City's upgraded FMS/3 Accounting System.
- Transferred 636 non-legal staff to the City's automated timekeeping program.
- Implemented a biometric handscan system to enhance our agency security access.

# INFORMATION TECHNOLOGY

Joseph Merces, Chief Technology Officer

The Information Technology (IT) Division is responsible for all aspects of computing and technology use including: network infrastructure, network security, connectivity, data management, information security, application support, database administration, software administration, technical support and much more. The Division's mission is to provide quality IT services and solutions – effectively aligning the agency's business and technology objectives to provide cost-effective, innovative and quality solutions that facilitate and improve the conduct of business of the Law Department.

The IT Division is comprised of four sub-units: Application Services, Network Services, Technical Support and Information Security. Keeping up with today's fast-paced world of technology is a challenge, but the Law Department is well positioned for the foreseeable future because of the technology investments and IT accomplishments made in 2009.



Williamsburg Bridge - 1937  
At the time it was constructed, the Williamsburg Bridge set the record for the longest suspension bridge span on Earth.

# OPERATIONS

Kenneth Majerus, Chief  
Jonathan Pinn, Deputy

The Division's two-fold mission is to provide centralized document production support and to improve operational efficiencies for the Law Department. The Operations Division is comprised of six document production and distribution units, and an operational analysis unit. The Document Production and Distribution units manage the service of legal process, case docketing, electronic document editing, courier services, composition and duplication of documents, the serving and filing of legal papers, and the creation and maintenance of document assembly templates. The Operational Analysis Unit works to improve the Department's operational efficiencies, and plays a major role in producing specialized reports, including data for the Mayor's Management Report and governmental audits.

## Highlights of Accomplishments from 2009:

The 100 Church Street building cabling replacement, a multi-month project, was completed. All building cabling that connects computer equipment to network switches and servers at the Manhattan office were upgraded. The upgrade provides additional bandwidth and improved data communications quality and speed. The project consisted of three phases:

- New network switch fiber replacement
- New computer desktop category 6e cabling to switches
- IT server room fiber and cabling upgrade

The Division accelerated and optimized our wide area network (WAN), improving application performance by implementing appliances that reduced bandwidth usage. Applications benefiting from the performance increase include Microsoft Outlook and LawManager.

The Law Department's document management system and repository, FileSite, was upgraded to a new server architecture, improving performance and stability. The improvement in performance made it possible to migrate FileSite to 11 MetroTech as part of an overall centralization strategy. The migration was completely transparent to all users.

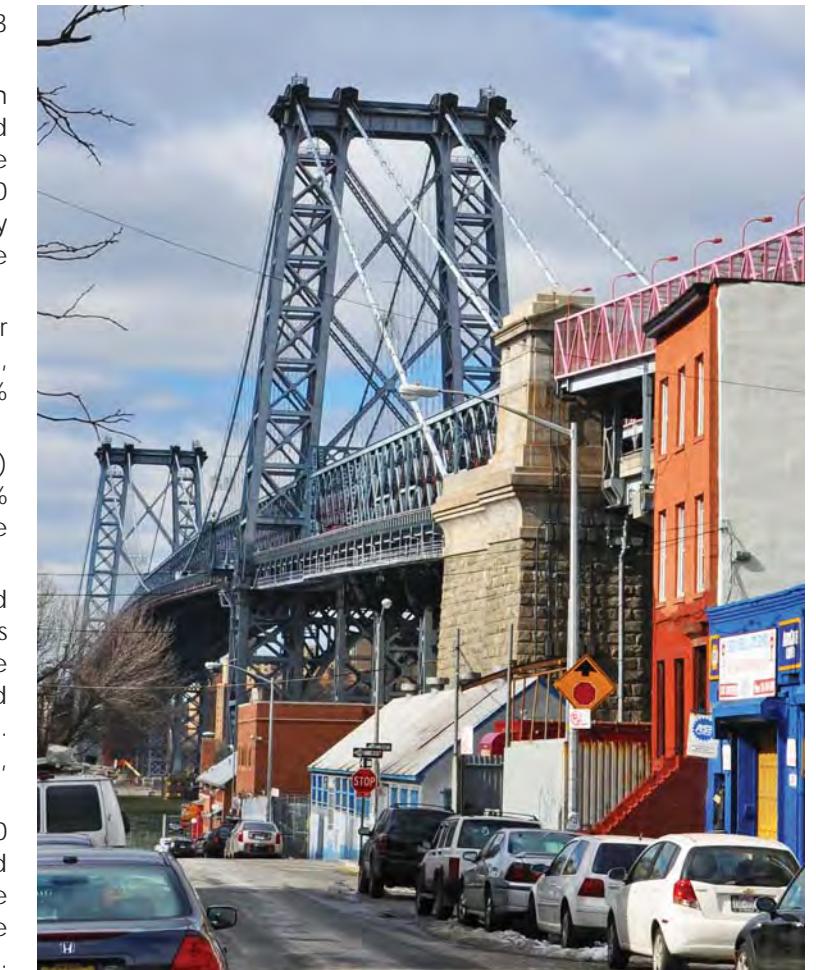
The Division migrated all BlackBerry users to a new server, providing users with much improved functionality as well as stability.

IT worked jointly with Administration and the Office of Payroll Administration, in the rollout of CityTime.

A great number of computer desktop, laptop, security and software upgrades were made in 2009 at the Law Department and continue to be made in keeping pace with technology.

## Highlights of Accomplishments from 2009:

- The Communications and Docketing Services Unit (CDS) handled over 66,000 individual items either delivered by hand or through personal service, a 9% increase over 2008, and opened nearly 27,000 new matters in LawManager, the office's case management system, a 35% increase from 2008. CDS staff also handled and processed nearly 317,000 pieces of U.S. mail, requiring nearly 10,000 production hours.
- An expanded Computer Training Unit organized and presented 23 different computer software courses, arranged in recurring monthly schedules. In the last year, 502 employees were trained: 383 Support Staff and 119 Attorneys.
- Operations analysts continued working with LawManager staff to test system patches and notebooks before implementation in the live system. This group also updated nearly 40,000 people, corporations and law firms in the Entity Notebook in an effort to clean and consolidate entity listings.
- The Document and Data Processing Center (DDPC) responded to over 6,700 job requests, which yielded 42,000 original pages, a 42% increase from the previous year.
- The Duplication and Finishing Services Unit (DFS) produced over 9 million pages in 2009, a 20% increase from 2008. Nearly 1.5 million pages were produced as PDF's or other image files.
- DFS and DDPC collaborated to create and maintain knowledge bases for the Pensions Decision Bank, the Tax & Bankruptcy Division S-File database, Appeals Brief Bank, Tort Structured Settlements and Tort Expert Witness Transcripts. Thousands of pages were scanned, indexed, named and saved online.
- In addition to maintaining templates for over 800 users, the HotDocs team created and deployed a template for the Commercial and Real Estate Division, allowing them to produce foreclosure documents in a much more efficient manner. Several new documents were also created and deployed for Tort Intake. Some of those include Disposition Sheets, Note of Issue Review Checklists and Letter/Authorization for Police Cases.
- New leasing was entered into for 1/3 of the multi-function devices in the agency at a reduced cost of 25% from the previous years. During calendar year 2009, staff members, using the 87 multi-function devices around the agency produced over 8 million copies, 2 million printed pages and over 1 million scanned pages.
- The Process & Courier Services Unit handled over 29,000 services, filings, deliveries and pick-ups, an increase of 9% from last year.



Williamsburg Bridge - Present Day

# Class of 2009 Assistant Corporation Counsels



*Mayor Bloomberg, Corporation Counsel Michael A. Cardozo, First Assistant Corporation Counsel Jeffrey D. Friedlander, Director of Legal Recruitment Stuart Smith and Deputy Chia Kang with the 2009 class of Assistant Corporation Counsels.*

The Law Department has long been committed to recruiting, retaining and promoting a diverse community of professionals. An Equal Opportunity Employer, the Law Department would rank fourth in ethnic diversity if compared to the nation's 100 largest law firms.

The Law Department's Diversity Committee works to enhance the recruitment and retention of attorneys of all backgrounds, and our Women's Committee focuses on issues of particular importance to the 60% of our attorneys who are women. The Law Department also has the largest number of openly gay attorneys among the law offices reporting this information to the National Association of Law Placement.

Diversity is reflected throughout the ranks of the Law Department. Five of our 17 division chiefs are Black, Hispanic or openly gay or lesbian and a majority of our attorneys work in a division led by a female division chief. The New York City Bar Associated named Corporation Counsel Michael A. Cardozo a Diversity Champion in recognition of his efforts to promote diversity both within the Law Department and the legal profession.



*Law Department Legal and Support Staff - 1922  
Pictured at center, behind banner: Mayor John Hylan (right), Corporation Counsel John P. O'Brien (left)*

## 2009 ANNUAL REPORT

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New York City Law Department  
Office of the Corporation Counsel  
100 Church Street  
New York, New York 10007  
(212) 788-0303  
[www.nyc.gov/law](http://www.nyc.gov/law)



Michael R. Bloomberg  
Mayor



Michael A. Cardozo  
Corporation Counsel