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## **PANEL FOUR: WILL THE STRUCTURE OF CITY GOVERNMENT BE ABLE TO MEET THE NEXT GENERATION'S DEMANDS**

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## PANEL FOUR: WILL THE STRUCTURE OF CITY GOVERNMENT BE ABLE TO MEET THE NEXT GENERATION'S DEMANDS

### Authors

Julia Vitullo-Martin, Ray Horton, David Jones, Richard Briffault, James B. Jacobs, Ruth Messinger, and Harry Wellington

PANEL FOUR: WILL THE STRUCTURE OF CITY GOVERNMENT  
BE ABLE TO MEET THE NEXT GENERATION'S DEMANDS

JULIA VITULLO-MARTIN, MODERATOR

This panel has been asked to discuss, "Will the structure of City government be able to meet the needs of the next generation in New York?" The answer is unequivocally no. Nonetheless, while the answer may seem simple, the question itself raises many complex issues.

We will begin our discussion with Ray Horton. Mr. Horton probably has the longest track record on this panel as a fiscal and analytic watchdog, whose reports have been problematic for top City government officials.<sup>1</sup> Mayor Giuliani seems to believe that Mr. Horton singled him out for monitoring.<sup>2</sup> Actually, Mr. Horton has monitored New York City mayors since 1971. His group—the Citizens Budget Commission—was created in the 1930s to watch over fiscally irresponsible mayors.<sup>3</sup>

Today, Ray Horton will talk about labor productivity, an issue obscured by Mayor Giuliani. During the fiscal crisis of the 1970s, New Yorkers came to understand its importance. Reports were issued regularly. The *New York Times* covered the issue extensively.<sup>4</sup> The assumption was, at the time, that people would never again underestimate the importance of labor issues. Mr. Horton will discuss what has gone wrong over the last couple of decades in labor policy and productivity and what can be done to resolve the issue.

RAY HORTON

Twenty-five years have passed since my doctoral dissertation was published as a book. I looked at it the other day. It was a study of a particular period in which New York City government moved from an

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1. Raymond D. Horton is the former president of the Citizens Budget Commission, a nonprofit group that serves as a "watchdog" over New York City finances.

2. See David Firestone, *Mayor and Budget Panel Sparring at a New Level*, N.Y. TIMES, Sept. 5, 1997, at B3.

3. See *Citizens Budget Commission* (visited Aug. 2, 1998) <<http://tap.epn.org/cbc/>>.

4. See, e.g., Maurice Carroll, *City Unit Praised for Productivity*, N.Y. TIMES, Mar. 11, 1974, at 58.

informal to a formal system of labor relations built around civil service unions and collective bargaining.<sup>5</sup> This transition took place during the five mayoral terms embracing Robert F. Wagner and John Lindsay. My dissertation concluded that in the clash of interests between the city and its employees, the mayor's weak bargaining skills hurt the public interest.<sup>6</sup> This occurred in part because of the structures of modern labor relations. That is really the "hook" on the topic of this panel. My focus will be structural, but more microscopic than what I believe my colleagues' approach will be.

I now believe that my prior conceptualization set forth in that monograph twenty-five years ago was wrong. The conceptualization may have been correct at the time, but it has been eroded by twenty-five years of experience in New York City government. Therefore, this morning I would like to accomplish three things. First, I want to present a better conceptualization of the municipal labor relations system. Second, I want to lay out the kind of evidence necessary to test the conceptualization. Finally, I want to discuss the implications of the structure of municipal collective bargaining in New York City.

First, how should the municipal labor relations system be conceptualized? The collective bargaining system in New York City serves neither the public nor municipal employees, because neither the mayor nor the bureaucratic civil service unions represent employee interests. The collective bargaining system has become a game played for the benefit of the mayor's office and the leaders of the bureaucratic civil service unions. This game works to the detriment of the larger civil society, including public employees. The public is cheated of competitively priced, quality municipal services. Public employees lose income and opportunities for advancement.

Second, if you examined this conceptualization, what would you look at? Who are the winners of the game as it is now played? The mayor may be one. Consider whom the unions have supported in mayoral elections and the impact their support has had on those elections. Consider also what the civil service leadership group has won—money, running through its bureaucracy. At one point this money went to the municipal employees, but now it has been filtered through the municipal union bureaucracy. The municipal union has both money and monopoly power.<sup>7</sup> Compare the cost and quality of services in New York City to those in other major cities. Consider employee wages, compensation, training, human resource development, equipment, and opportunity for advancement.

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5. See generally RAYMOND D. HORTON, MUNICIPAL LABOR RELATIONS IN NEW YORK CITY; LESSONS OF THE LINDSAY-WAGNER YEARS (1973).

6. See *id.*

7. See *id.* at 54-55.

Finally, since the topic of this panel is what changes are needed to meet the demands of the next generation, questions concerning the locus of power are very important. The next generation has the same interest in municipal services as the last one. People want good, competitively priced services, or services so exceedingly good that they are worth more.

Can the system be repaired? In general, civil service unions must be held accountable. Currently, these unions and their leadership are accountable to virtually no one, including, in some cases, the employees they are supposed to represent. They are closed systems. Some form of union democracy coupled with financial oversight must be introduced to help make bureaucracies work for the interests of those they represent.

Repairing the system is also intimately related to campaign finance. A few years ago, the Citizens Budget Commission spent two years investing an enormous amount of blood, sweat, and tears in a report titled "Budget 2000." Budget 2000 was a search for a way to restructure New York City and State government for the next century.<sup>8</sup> The Commission had many good ideas, but it encountered two major implementation problems: campaign finance and a municipal union collective bargaining system that fails to serve the public.

#### JULIA VITULLO-MARTIN, MODERATOR

Nine years ago, I observed the Charter Revision Commission proceedings as an outsider. During those proceedings, I often thought about a rule of thumb that I had learned in the political science field thirty years ago. New York City was said to have a strong mayoral system, but a weak mayor. In contrast, Chicago, the city where I attended school, had a weak mayoral system, but a strong mayor. The Charter Commission met during the reign of Mayor Ed Koch at a time when there was a great deal of talk about weakening the powers of the mayor.<sup>9</sup> After Koch came Mayor Dinkins, and a lot of former proponents of that view said, "Oops." Now, Mayor Giuliani reigns oblivious to the Charter and its restrictions. He thumbs his nose at his opponents and does what he wants. He has also sought to disregard the Charter in certain areas such as the Independent Budget Office and in the release of information.<sup>10</sup> In fact, a famous fight ensued between Ruth Messinger and the mayor when he refused to release

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8. See Clifford J. Levy, *A Plan for Saving Billions in Budgets*, N.Y. TIMES, Dec. 6, 1996, at B3.

9. See Alan Finder, *Crucial Vote for Koch: The Mayor's Power Is Reassessed*, N.Y. TIMES, Aug. 21, 1987, at B1.

10. See Adam Nagourney, *Messinger, Calling City Hall Secretive, Sues over Information*, N.Y. TIMES, May 28, 1997, at B2.

public information to her because she was a governmental official and, therefore, in his view, not an ordinary citizen.<sup>11</sup>

Our next speaker, David Jones, the president of the Community Service Society, has devoted much of his adult life to public service, in particular to the welfare of the poor. These are grim times for people who are concerned about the welfare of the poor in New York City. Mr. Jones is going to discuss what has happened to the systems that were established under the Charter. Is government doing what it is supposed to be doing? Does it provide citizens with the information they need? In an earlier presentation, Mr. Schwarz spoke about the spirit of openness that they had seen during the Charter Revision Commission meetings—a spirit which probably has since left us.<sup>12</sup> What does all of this mean for poor people in New York?

#### DAVID JONES

There will be a day beyond Giuliani. Meanwhile, what is going to happen to the more than 1.4 million people living below the poverty line in the City of New York?<sup>13</sup> Some of the aims of the 1989 Charter Revision Commission were to open government up to the public and make it easier to access information. These aims are not materializing for the city's poor.<sup>14</sup> New York City has approximately 800,000 people on the welfare rolls,<sup>15</sup> and the changes in welfare policy have put these people on a train which is scheduled to arrive about five years ahead of schedule in a city that can be a bad place for people with limited education and skills.

What has happened was not what the Charter revisers envisioned. One of the structural by-products of Charter revision has been the development of an overly strong mayor and a rather weakened, at least at times, City Council. The Giuliani administration consciously seeks to shroud information about what happens to poor people in a closet of secrecy.

While past mayors grumbled and complained when advocacy groups reported figures in ways these mayors did not like, the information

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11. *See id.*

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

13. 1998 COUNTY AND CITY EXTRA: ANNUAL METRO, CITY AND COUNTY DATA BOOK 938 (Deirdre A. Gaquin & Mark S. Littman eds., 1998) [hereinafter 1998 COUNTY AND CITY EXTRA]. According to the latest figures, more than 19.3% of the New York City population lives below the poverty line. *See id.*

14. A number of lawsuits have been brought by the media and nonprofits to obtain information withheld by the Giuliani administration.

15. *See* Abstract, *More Than a Menial Job*, N.Y. TIMES, Apr. 17, 1998, at A1 ("In New York City the welfare rolls listed 797,000 recipients" in March 1998).

ultimately flowed. One could find statistics to build a case for the public that things were either going right or wrong. The introduction of the Freedom of Information Act ("FOIA")<sup>16</sup> was seen as an ultimate protection. It could be applied and get things done. But the Giuliani administration has figured out one of the key weakness of the Act—if you do not collect the data, you cannot be asked to review it.

We encounter this time and time again when we ask, "Well, how many people are on WEP?"—the Work Experience Program. The response is, "Basically, we do not keep those kinds of statistics." What have been the lay-off statistics for people of color? There has been a marked downsizing, for instance, of municipal, state, and federal employment in this area. One of the statistics I saw over the last three or four years indicated that we have lost a total of 8.7% of the full-time City-funded workforce.<sup>17</sup> Those of us who are paranoid and distrustful of government suspect that if you examined those statistics, you would find that an overwhelming number of those individuals are black, Latino, and Asian—and not just because we are paranoid. The agencies that have been dramatically downsized happen to be the areas where blacks and Latinos, in particular, had begun to make sharp inroads in employment. For example, minorities were getting a leg up in the Human Resources Administration and other social welfare agencies. They have not achieved similar success in the fire and police departments. Only three percent of the fire department consists of people of color.<sup>18</sup>

Those trends characterize what is happening in the municipal work force. Who is being attrited out? Who is being laid off? What is the downstream effect of these trends on the creation of a strong black, Latino, and Asian middle class? Those questions are not on the table, because we do not have the statistics.

Concerning welfare reform, we do not know who is going off the welfare rolls. Why? Data is not collected. We only have the raw data which indicates that we have cut welfare rolls by a third.

Where did the people go, to big jobs at law firms and on Wall Street? I do not think so. The 8.8% unemployment rate<sup>19</sup> and the results from a

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16. Under the Freedom of Information Act (FOIA), a private citizen may request information from the government. There is no standard method for requesting information; it varies depending upon the governmental agency with which the individual is dealing. See N.Y. PUB. OFF. LAW §§ 84-87 (McKinney 1990).

17. See MAYOR'S MANAGEMENT REPORT, PRELIMINARY FISCAL 1996 SUMMARY.

18. See David R. Jones, *The Urban Agenda: African-American Men Shut Out of the Nation's Boom Times*, N.Y. AMSTERDAM NEWS, June 28, 1997, at 7 ("The city's Fire Department, a white enclave, is notorious for its tiny percentage of African-American employees.").

19. See 1998 COUNTY AND CITY EXTRA, *supra* note 13, at 939.

study that we did a year ago on low-wage earners—people with a high school education or less—show that there is no room in this economy for these individuals even if the economy booms.<sup>20</sup>

We need data. This need transcends the issues of progressive, liberal, Democrat, and Republican partisanship. As people who live in this city, we should know these numbers. They are huge. There are 400,000 individuals whose welfare benefits will soon be terminated in an economy that is already having trouble absorbing low-wage workers. That could be devastating for the quality of life, not only for the very poor, but for all of us.

There are ways to improve the situation. For starters, serious discussions need to begin about how to break through the log jam in data collection. This should not be a partisan issue. We must have access to information to monitor what is happening to the poor and answer some fundamental questions. Are they finding jobs? Are they ending up homeless? Is the increased use of food pantries a product of moving people off the welfare rolls? Can we give people in the Work Experience Program a career path?

Much is not recorded, however, particularly information that would help workers move to the private sector. For example, the fact that “you come to work every time and do a little extra in sweeping up leaves” is not recorded. One can do his or her best and be the best leaf sweeper ever. At the end of that time the unfortunate fact remains that you cannot go to a future employer and say, “Look, I have a report here that says there has never been a finer leaf sweeper.” That information is not collected. How can you make people ready for the private economy if you do not give them a work report showing their value as an employee. All of these things have been swept behind an ideological stone wall that we have to find a way to remove.

An amendment to FOIA or new legislation demanding that this data be collected is vital. The other issue concerns the Independent Budget Office (IBO),<sup>21</sup> which is now being condemned on all sides. The mayor is actively seeking to have it defunded entirely.<sup>22</sup> The City Council has not fought for it as vigorously as they could have. The IBO must become a vital office

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20. See generally HUGH O'NEILL ET AL., WHERE THE JOBS ARE: HOW LABOR MARKET CONDITIONS IN THE NEW YORK AREA WILL AFFECT THE EMPLOYMENT PROSPECTS OF PUBLIC ASSISTANCE RECIPIENTS, A REPORT TO THE COMMUNITY SERVICE SOCIETY OF NEW YORK 29-46 (1997) (describing the job market for less-educated workers).

21. See Liz Willen, *City Briefing*, NEWSDAY (N.Y.), Feb. 9, 1998, at A21. The IBO “provides an outside and nonpartisan analysis of the City’s budget and economy.” *Id.*

22. See Michael Finnegan, *Budget Watchdog Again Nips at Rudy*, DAILY NEWS (N.Y.), Apr. 2, 1998, at 28.



and start collecting information to give us a more balanced view of what is happening.

In closing, I am particularly worried about the frenzy to downsize the municipal work force without looking at the consequences to a city as racially diverse as the City of New York. Other generations of New Yorkers have used municipal work as the way into middle-class America. We have suddenly sliced that route off. This is a dangerous road to take in a racially divided and racially diverse city, particularly when WEP work has become the major job opportunity for blacks and Latinos. We are building a future in which none of our children will want to live, in a city none of us envisioned. I refer to the downsizing of the municipal workforce; the fact that we have not come to grips with public education; and the fact that we are suddenly attacking the City University of New York (CUNY) system, which largely serves black, Latino, and Asian students.<sup>23</sup> I am worried because we are going to have to live here long after the politicians say, "Well, I've got it under control. Those other politicians who followed me messed it up." Our children—and at least some of us who cannot flee—will be the ones who have to take on the disaster that is left.

JULIA VITULLO-MARTIN, MODERATOR

In New York, we live in a particular type of democracy, one that was presumably furthered by the Charter Revision reforms. One of the most fundamental questions facing democracies is, "How do the people participate?" Today, the issue of democratic participation seldom raises its ugly head in City Hall. Nonetheless, Richard Briffault, a professor of law and vice dean at Columbia Law School, is going to raise it here today. He will discuss how the voice of the people can be found and heard. Professor Briffault will address, in particular, the borough boards, community boards, and school boards—all against the background of Charter revision reform.

[Richard Briffault's presentation appears in this issue as a separate article titled *The New York City Charter and the Question of Scale*.]

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23. See Mike Bowler, *Trend Hurting Minority Students*, BALT. SUN, June 3, 1998, at 2B; see also Richard Perez-Peña, *CUNY Policy Sparks Race Debate*, GREENSBORO NEWS & REC. (N.C.), May 18, 1998, at A2.

## JULIA VITULLO-MARTIN, MODERATOR

Today, we are ruled in New York by a former prosecutor. This will likely have a chilling effect on corruption in City government. It has certainly had a chilling effect on corruption in a few areas, for example, the Fulton Fish Market. To speak on the subject, we have James Jacobs, a professor of law and director of the Center for Research in Crime and Justice at New York University School of Law. He has written widely on anti-corruption and recently published a book called *Pursuit of Absolute Integrity*.

[James B. Jacob's presentation appears in this issue as a separate article co-authored by Alex Hortis and titled *New York City as Organized Crime Fighter*.]

## JULIA VITULLO-MARTIN, MODERATOR

Our last speaker is Ruth Messinger. Ruth has been interested in Charter reform for a long time. In the 1980s she formed a group called "Citizens for Charter Change."<sup>24</sup> Was this a type of parallel group to the Charter Revision Commission?

## RUTH MESSINGER

It was a grass-roots group.

## JULIA VITULLO-MARTIN, MODERATOR

Ruth Messinger will propose a series of reforms that she would still like to see.

## RUTH MESSINGER

I am only going to do some of that today. I have been a practitioner under a new Charter as Manhattan borough president. Eric Lane immortalized me forever as the person who let you know that if lobbyists ply people in positions of power with enough potato chips, you can change the Charter.

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24. See Maurice Carroll, *Charter Panel Faces Its First Real Test over Weighting Votes*, NEWSDAY (N.Y.), Mar. 25, 1989, at 6.

Citizens for Charter Change was a grass roots group with players from municipal unions, the New York City Public Interest Research Group, the New York Lawyers for the Public Interest, and some elected officials and advocates.<sup>25</sup> We spent a great deal of time commenting on and lobbying to change the draft recommendations of both the 1988 and 1989 Charter Commissions.

I will suggest two big areas for structural or operational change. One such area has been discussed during the course of the day; the other one has only been mentioned. I will also suggest three or four things I think we need to keep in mind for possible future commissions.

The first structural issue that Richard Briffault addressed on this panel was how much decentralization of decision-making there should be. The 1989 Charter Commission made a serious effort to change the structure of the Council and tried to focus on the changes in population, demographics, and the emerging role of so-called minorities (who are no longer minorities) in the city.<sup>26</sup> Although Fred Siegel would disagree,<sup>27</sup> I do not believe the Commission was overly consumed with that issue. I thought they tried to deal with it effectively. However, there is more to examine. We still have a severe problem, not only formally under the Voting Rights Act, but informally with the level of voter participation.<sup>28</sup> One reason is that people do not feel decisions really involve them.

There are a few ways to address this issue. We lobbied the 1989 Commission extensively on the question of the role of borough presidents. I think Fred Siegel was absolutely correct when he suggested that there are still effective areas for administrative decentralization. Ed Costikyan submitted two papers to the current administration as a strong advocate for additional borough-based decision-making in education and in support of

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25. See Richard Levine, *Minority Officials Seek Revised Board of Estimate*, N.Y. TIMES, Mar. 1, 1988, at B4.

26. See generally Ian F. Haney-Lopez, *Race, Ethnicity, Erasure: The Salience of Race to Latcrit Theory*, 10 LA RAZA L.J. 57, 122-23 (1998).

The racial demography of the United States is changing, and changing quickly. In 1960, the census counted nearly ninety percent of the population as White and the remainder as Black . . . . On the advent of the new millennium, however, those numbers are radically different . . . . If current trends continue, by 2050 the United States will be just a bit more than half White.

*Id.* at 122-23.

27. See Fred Siegel, *Panel Three: City Government: The Next Generation's Demands*, 42 N.Y.L. SCH. L. REV. 1027 (1998).

28. See Eddie Baca, *New York Forum About Politics*, NEWSDAY (N.Y.), Feb. 12, 1991, at 44.

some administrative decentralization of agencies.<sup>29</sup> These papers included some very well-reasoned arguments and proposals that would not lead to Balkanization, as critics claim, but would open up opportunities for people to get involved locally. I am interested in what Richard Briffault said about community government and an additional focus on community boards.

I also want to make three observations concerning community boards. First, you cannot expect community boards to fulfill their current Charter roles, much less do more to bring issues to the attention of their communities or speak for their communities, if you continue to cut their budgets.<sup>30</sup> Second, we should increase the actual, as opposed to the advisory, role of community boards by setting up a new system; community boards should not get money but should be able to negotiate for certain municipal services to experiment with in their jurisdictions.

For example, consider noise enforcement. It is a big issue in some neighborhoods, and irrelevant in others. You should allow a board plagued by noise problems to try adding thirty noise enforcement personnel. Let individual boards negotiate to address the services that are most difficult in their areas. It is a cheap effort, it is easy to manage, and it could be done without any cash. In other words, the boards would be negotiating for an amount of money for additional municipal services pertinent to their neighborhoods. No longer would they run into the usual response to proposed changes: "We cannot conceivably do this. This is a city of seven and a half million people. You have no idea how much that would cost." It would not cost a lot to try what Community Board 17 in Brooklyn wants to try and what Community Board 2 in Staten Island wants to try.

Third, we must consider the emerging roles of new populations in the city. The Charter of the City of New York requires, in the slightly complicated process in which Council members nominate and borough presidents appoint members of community boards, that these boards must fully reflect the demography of the communities in which they are appointed.<sup>31</sup> I could show you a series of scars that result from having done that in the borough of Manhattan over the last eight years—fights

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29. See, e.g., Memorandum from Edward N. Costikyan, Special Advisor on School Decentralization, to Rudolph W. Giuliani, Mayor, City of New York (June 29, 1994) (on file with the *New York Law School Law Review*). Edward N. Costikyan is of-counsel to the law firm of Paul, Weiss, Rifkind, Wharton & Garrison, and was appointed as Mayor Giuliani's special advisor on school decentralization.

30. See generally Ted Rohrlich, *Neighborhood Power Is Key to Charter Debate*, L.A. TIMES, Mar. 19, 1998, at A1. In comparing cities with the most effective neighborhood councils, one study by researchers at Tufts University found that the most successful councils possessed several similar traits, including significant resources and the power to allocate some goods and services.

31. See N.Y. CITY CHARTER ch. 70 § 2800(a) (1989, as amended through 1997).

among different so-called minority communities and anger among those who believe that a community board appointment is a tenured appointment. In Manhattan we made significant strides in representation. I am not sure it is being tried elsewhere.

These three observations raise another issue about community government and local decision-making. We will only involve more people in choosing their Council members or in enforcing community board diversity if the press decides to pay attention to more than mayoral decisions. This is a critical issue. In any other city, if you read the local newspaper for three consecutive days, you will know the name of the leading voices in the City Council. You will know the exact nature of the current budget fights, whether the major issue is over a division of priorities or the use of money, and who is on which side. You can read every one of four newspapers in this city for a year and not know who represents you, much less what is being decided. During my twelve years on the City Council, the *New York Times* published only two roll call votes of the City Council.<sup>32</sup> Both votes dealt with gay rights—an important issue, but not the only issue, and certainly not the only issue with dissents.

The second structural issue I want to discuss is that this conference should lead to advocacy for enforcement of ignored provisions of the Charter. I will mention four such provisions, all of which have been mentioned by at least one speaker. First is coterminality. Coterminality is possible because it makes involvement in community government and the role of Council members easier and more focused. Second is the Independent Budget Office. It is impossible to stop people from trying to defund something in the Charter, but we have all suffered from seven years of lawsuits, and now a new round of threats voiced by the mayor.<sup>33</sup> He has threatened Ray Horton by taking away his money, and now he is threatening to go to the State legislature and abolish the Independent Budget Office and the Special State Deputy Comptroller for the City of New York.<sup>34</sup> Third is the Freedom of Information Act. We do not get any information. I have a very successful career as a lawyer, yet I have no law degree. I have argued one case pro se, and I have won.<sup>35</sup> I am not going

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32. See Joyce Purnick, *Homosexual Rights Bill Is Passed by City Council in 21-to-14 Vote*, N.Y. TIMES, Mar. 21, 1986, at A1 (referring to a similar bill defeated by the City Council twelve years prior to the passage of the current legislation).

33. See *Chart New Course for the City*, DAILY NEWS (N.Y.), May 3, 1998, at 48.

34. See, e.g., Robert Polner & William Murphy, *Pols & Politics, Dust off Old Drug Initiative*, NEWSDAY (N.Y.), May 15, 1998, at A34 ("The mayor has made no secret of his desire to abolish the City's Independent Budget Office, calling it everything from silly, shoddy, and jerky to absolutely useless.").

35. See Mark Kriegel, *Free Speech Not Rudy's Forte*, DAILY NEWS (N.Y.), Jan. 2, 1998, at 7.

back into court. Although I won, I lost, because I have not received the information I sought. Fourth is voter registration. There is now a law that says every City agency must offer the opportunity to register to vote to anyone who deals with that agency.<sup>36</sup> Many agencies are not doing it. The statewide implications are extremely serious, because it is happening elsewhere in the state and is skewing the state electorate in ways that not everyone may like. It is an issue in the city.

I want to make four final observations. First, when a new Charter has been passed and existing provisions of the Charter are not being followed, litigation is necessary and appropriate. Litigation is a necessity to ensure that the law is enforced.

Second, problems have arisen from the 1989 Charter that have not been discussed today. I understand Mr. Schwarz's and Mr. Lane's position on individual contracts going before the Council,<sup>37</sup> but as Fred Siegel discussed,<sup>38</sup> the contract process has become more obscure and less easy to access. Serious problems have arisen, and the contracts process should be examined.

Third, as we think about the coming Charter revisions, note that forty-one of the fifty-one office holders in the City of New York will not be eligible to run for re-election in three-and-a-half years. To have eighty percent of the City government change means that we have to pay attention to the law and the City government structure, as well as to what Charter provisions are being followed and what provisions need to be added. We should begin working on this now.

Fourth, to return to an issue that David Jones and John Mollenkopf discussed,<sup>39</sup> the issues that the 1989 Charter Commission tried to address remain the most fundamental issues in this city today. These include the increasingly complex demographics of the City of New York and the serious and pervasive problems of poverty. As people look at the next rounds of Charter change, they need to decide the purpose of municipal government. If it is to provide only so called "basic" services, then they will leave to fester divisions by race and poverty. If it is to look for ways to give people more autonomy—which is obviously the purpose behind welfare reform—and to realize that government has a role in trying to

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36. See N.Y. CITY CHARTER ch. 46 § 1055(4) (1989).

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

38. See Fred Siegel, *City Government: The Next Generation's Demands*, 42 N.Y.L. SCH. L. REV. 1027 (1998).

39. See Jones, *supra* note 18, at 7; see also JOHN HULL MOLLENKOPF, *A PHOENIX IN THE ASHES: THE RISE AND FALL OF THE KOCH COALITION IN NEW YORK CITY POLITICS* 149 (1992) (describing the 1977-89 economic boom and New York City's physical development).

create greater equity, then we may develop the answers that we will need for the twenty-first century.

#### PANEL FOUR DISCUSSION

##### AUDIENCE MEMBER 1

My name is Tom Rozinski. I am the general counsel for the Parks Department, which has a very large Work Experience Program population—over 5,000 people.<sup>40</sup> We do three things to try to develop the skills of the people that are in the WEP. First, we have an awards program that recognizes people at the district and borough levels. Second, we have an extensive training program called, “Parks Career Training.” The only requirements for admission to this program are to show up to your assignment regularly and show some interest in getting your job done well. There are no specific educational requirements. Third, after you receive the job training, we have a staff of full-time job counselors who try to place as many people as possible into full-time positions. In the last three years, we have placed about 750 people in full-time positions. We are trying to make an effort to move people on and to give them skills. My question to Mr. Jones is what else would you want us to do?

##### DAVID JONES

I am very supportive of the WEP if it is done right. But we need the data to determine whether you really are doing it right. Every time advocates ask, “Tell us about this program, how it works, how the assignments are made,” we hit a stone wall. I know that the WEP can work. Nonetheless, you must have an open function so we can react and praise when we think it is great and criticize when it is not. I am not condemning the notion of the WEP when it is done well. For example, there was a Russian immigrant who was in an ESL program<sup>41</sup> to try to learn English. His case worker assigned him to the Parks Department at the same time his ESL classes met, knowing he could not show up for both. This was an effort to drive him off the rolls. Those kinds of terrible stories are out there, and we have documentation. What the City needs to do is tell us the stories of what is being done, make it public, and give us the

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40. See *Weekend Edition-Sunday* (NPR radio broadcast, Aug. 17, 1997) (transcript on file with the *New York Law School Law Review*).

41. ESL stands for “English as a Second Language.”

data so we can use it. We have to have data to characterize and understand both the good and bad things that are happening.

AUDIENCE MEMBER 1

If I could just follow up on that.

DAVID JONES

Sure.

AUDIENCE MEMBER 1

We do try to get information from people who drop out of the WEP. As you know, however, it is often difficult to reach them. They may not have addresses, they may not have phone numbers, and they may not be interested in talking to us. It is not the easiest thing to accomplish.

DAVID JONES

The data are not being collected. I wish you could assure me, beyond your department, as a representative of the administration that we will get the data we need—not only in the Parks Department but for every WEP person; that we will have the information; that we can track these individuals. We can talk to you about how tracking could work. We are willing to share. If I were to go to another City agency, I would not get anything. There has to be a citywide policy, and we hope you go back to the mayor and say, “We’re willing to reveal everything about WEP.” I think many not-for-profit organizations would say, “Hallelujah.”

JULIA VITULLO-MARTIN, MODERATOR

Next question.

AUDIENCE MEMBER 2

I have a question for Mr. Jacobs and a question for Mr. Horton. Mr. Jacobs, you spoke about the City’s fight against organized crime, and the papers report on a fight against street crime all the time, but why does no one seem to be concerned about white-collar crime? Mr. Horton, my question for you is, to the extent that the relationship between the mayor



and the municipal unions is costly to the City, has there not been some benefit in our recent history of labor peace in the city?

JAMES B. JACOBS

I do not believe that no one is concerned about white-collar crime. There is probably more prosecutorial effort in white-collar crime now than at any time in American history. There are white-collar crime units in all the federal prosecutors' offices—something that did not exist ten years ago. There are also similar units within the Manhattan D.A.'s office. We still have a very robust Department of Investigation.

RAY HORTON

I would argue that we may have had too much labor peace. It would have been much better for the system if employees had been able to exercise a fundamental human right: the ability to withhold their labor from their employer. This would have spurred much more serious bargaining and would have reduced reliance on third-party procedures. It would have been a much better system if strikes had been permitted.

AUDIENCE MEMBER 3

I am Alvin Burke, Coalition of Brooklyn Community Boards and Brooklyn Community Board 14. My question is primarily addressed to Ruth Messinger and David Jones. You have recounted many abuses of the Charter. What allows these kinds of abuses to take place is a lack of distribution of power. Ms. Messinger, we had a distribution of power when you were borough president—or actually when the presidents had the Board of Estimate vote prior to the 1989 Charter Revision. They could use their vote as leverage—whether it be on contracts, budgets, or land use—to exact from a mayor those concessions that were required. It did not always work. They had to do it in concert sometimes. It had the side benefit of being a consensus-building mechanism. My question for both of you is what form of government do you believe might restore some of the distribution of power so a borough president or a major non-profit community service group can get the Charter compliance that the law specifies? I do not believe litigation is the answer because it stretches on too long.

## RUTH MESSINGER

I know it stretches on too long, but it is always going to be a necessary antidote to abuses of power. My experience in City government suggests that Charter provisions and decision-making models only work to a limited extent, and they are dependent—as I think was pointed out several times this afternoon—on the attitudes of the people in power.

I disagree with Richard Briffault about the current power and authority of borough presidents. The Board of Estimate was actually an appalling structure of City government. It was very discomfoting over twelve and a half years in government to watch decisions made after the fact. I once had a group of constituents who lobbied the president from another borough and told me they had that individual's vote. I told them that by the time it was 1:00 a.m., that would not be true. I was correct. They were disappointed.

And when they asked the individual what happened to the promise, they were told, "I got a garage." That is not the way in which major land use and development decisions should be decided. How do you get some of those decisions made more equitably? The Bronx Borough President's Office issued the first serious Community Land Use Plan—197(a) Plan.<sup>42</sup> The office did it brilliantly. The fact that nobody in New York City who reads the newspaper on a daily basis probably knows about the plan indicates that the borough president's power lives outside public view and, thus, carries less substantial power.

We spend about twenty million dollars a year. I spent it on projects that came in on time and under budget. It is important to the borough and people of this city to know how elected officials who have that authority are spending their money.

The power structures are there. When they are minimized and ignored by the press, when you run into obstacles in carrying them out, I do not know any other way to proceed except to challenge under the law. Much of this is making clear to the public that they have a stake in enforcing existing power divisions that are currently not being enforced.

## DAVID JONES

I question whether things would be much different today under the old system, given that the City has a very strong mayor who can control the press to a certain degree and who browbeats institutions. For example,

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42. See generally Alan S. Oser, *Realigning the Powers in Land-Use Control*, N.Y. TIMES, Oct. 15, 1989, at R9 (describing the procedure behind 197(a) plans).

when I was in the Koch administration, when the not-for-profit budget office had a not-for-profit organization complaining or saying something the mayor did not like, the budget office could intimidate the organization by threatening to audit it. I do not know if a new City government structure would have stopped this. We have a political problem rooted in racial divides and changes in the economy. I do not think tinkering with the Charter would change much. I think there are many convergent forces: the lower voter participation and the weakness of the labor unions. All of these elements would have to be considered in evaluating prior efforts to restructure City government.

#### AUDIENCE MEMBER 4

Mr. Horton, you mentioned that there was a strange relationship between the municipal unions and the mayors. Is this more true with the present mayor? Mr. Jones, you highlighted several things about which you were really on the money. Yet, as I recall, you were silent on these issues during the last mayoral election. Ms. Messinger, concerning community boards, I know you had the most equal representation in terms of ethnicity, geography, and gender. What formula did you use? Who was the worst at establishing equal representation on the community boards? Was Claire Schulman the worst?

#### RUTH MESSINGER

I never did the counts for the other boroughs. I did ask my community liaisons to take the demographic information from the 1990 Census and look at the boards with demographics in mind. Boards represent neighborhoods and communities, so you want to have people from every neighborhood. As we tried to make changes to more fully reflect the official demography, we often ran into fierce resistance from people in those communities who resisted any change. It was a long, slow process that I believe has much to do with allowing new groups and their natural leadership to emerge in roles of influence, power, and authority in City government. Somebody should go out and count citywide and bring the numbers to the attention of the borough presidents in all the boroughs.

#### DAVID JONES

I have a couple of answers. During the entire campaign, I was writing about critical issues and discussing the mayor's role. I talked extensively about the issue of low participation rates of minorities in City agencies. My organization helped lead the fight against privatization of public

hospitals. Some would question whether this is newsworthy to certain constituencies. Your question raises others. How far can a non-profit go and still remain nonpartisan, and who in the mainstream press is listening? We attracted coverage in the press only on the issue of privatization of hospitals because the mayor took on that issue. Your question is about whether you can really do political activism from a base of a nonpartisan institution.

JULIA VITULLO-MARTIN, MODERATOR

Mr. Horton, you have the last word.

RAY HORTON

I think the current mayor has followed the tradition of his Democratic predecessors by using the mayoral relationship with civil service union leaders to feather his own electoral nest rather than to serve either the interests of the public or those of municipal employees.

JULIA VITULLO-MARTIN, MODERATOR

I would like to thank the panelists and all of the participants.

HARRY WELLINGTON

Thank you. This marks the end of our symposium. I think all the participants did honor to the City of New York and the Charter and helped celebrate the hundred-year anniversary of the consolidation of the City of New York. I appreciate everyone's participation. The audience has been terrific as well. It has been a long day, and we are deeply grateful to everyone. Thank you for sharing your time with us.