

**A STUDY OF THE  
CHICAGO DEPARTMENT OF LAW**

**Research, Analysis and Recommendations**

**Conducted by**

**The Chicago Council of Lawyers  
and  
The Fund For Justice**

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## CHAPTER I

### INTRODUCTION

In 1982 the Chicago Council of Lawyers and the Fund for Justice embarked on a study of the Chicago Department of Law ("Department"). Our study, released to the public in April, 1984, showed that James Montgomery, who became the corporation counsel with the election of Mayor Harold Washington, had inherited an office in disarray. While there were high quality lawyers present in the office, their work was eclipsed by patronage hiring and a lack of interoffice communication. Too many lawyers were paying more attention to their private practices than to representing the City of Chicago.

There was no objective system of evaluating personnel and no systematic analysis of the types of legal matters in which the Department should be involved. Our study noted a lack of effective supervision and inadequate support staff. Paralegals were nonexistent. The office existed only to serve as counsel to the Mayor of the City of Chicago.

A handful of attorneys were trying to provide representation to the City on important matters. Less critical matters were being ignored and, at best, the quality of the legal work was mediocre. One consequence of the lack of proper management of the Department was a budget for outside counsel of more than two million dollars. The Chicago Department of Law was a loosely knit group of attorneys seeking to prevent legal disasters. They were often unsuccessful.

When we released our 1984 report we said that a modern city law office should be part

of a city's fiscal as well as legal management; it must be able to defend the City in court action, bring suits on its behalf, and enforce its laws through vigorous prosecution. We also said that the Department must be able to counsel city government and be involved in the legislative process so that problems do not arise or are reduced in scope.

We said that the Department must change its basic structure and thrust so that it would move toward becoming an efficient and effective public law firm that protects Chicago's interests in both the short and long terms. And, in so doing, it should aim toward being perceived as competent, vigorous, and exemplary by the judiciary, the bar, and the public.

We offered 33 specific recommendations that, if implemented, would help create an exemplary law office by enhancing the existing strengths and eliminating the weaknesses. We said that Chicago could have an exemplary law office but only if all City officials, including the Mayor and the City Council, wanted to invest the requisite time and money.

When we began our original study of the Department, the Byrne administration had refused all cooperation with our work. However, when our study began officially in February of 1983, the Washington administration offered its cooperation and in April, 1984 Corporation Counsel James Montgomery attended the press conference at which the report was released publicly. He noted the accuracy of the report and pledged that it would be utilized as he worked with the Mayor to rebuild the Department.

In November, 1992, the Council and the Fund began a reexamination of the Department to assess the extent to which this important public law office has moved toward becoming the exemplary model that Chicago deserves.

This report is the culmination of our study of the Department which was conducted between November, 1992 and March, 1994, including comparisons with past studies of the Department. We utilized personal interviews, telephone interviews, and mail questionnaire surveys. We received the cooperation of the Department.

In reviewing the results of our work, we found a dramatic improvement in the quality of representation being provided to the City of Chicago over the past decade. The majority of our 1984 recommendations have been implemented and the Department has enacted other reforms. The Department, however, needs to work on assuring that top quality legal services are provided by all of its employees all of the time and to maintain the other gains that have been obtained.

Our objective in this report is to document the transformation process - to analyze and discuss the steps taken that have improved the Department. Our objective is to also report on the weaknesses of the Department that still exist and to offer additional recommendations for the continued improvement of the Department.

In Chapter II, we outline the purpose of our study and why we chose this focus. We

also, in Chapter II, describe the research methodology.

Our objective in Chapter III is to document the past criticisms of the Department. This includes a historical perspective by reporting on the Department as it existed 30 years ago and as it existed 10 years ago at the time of our last report. To contrast the historical perspective, we in Chapter IV profile the Department as it exists today, including a description of its current procedures and policies.

In Chapter V, we continue the current description of the Department by reporting the results of interviews that we have had with community group representatives, practicing lawyers and aldermen.

To complete the local profile, in Chapter VI we provide the results and analysis of our mail questionnaire survey of state and federal judges who have had professional contact with Department attorneys.

In Chapter VII, we contrast the current workings of the Chicago Department of Law with the results of our telephone interviews with representatives of municipal law departments in 13 other cities nationwide. In Chapter VIII we discuss the extent to which our 1984 recommendations for the Department have been implemented. We offer our conclusions and recommendations in Chapter IX.

An exemplary municipal law office must be capable of dealing with legal challenges in a expeditious, effective, and creative manner. High quality representation for the City of Chicago not only means effective defense of Chicago's interests, it also means additional revenues for the City of Chicago. We have made our report and recommendations in the understanding that the Department of Law should be praised for its improvements. But it is imperative that the Department continue to strive for further improvements and to maintain the constructive changes that have occurred.

We wish to thank Mi Young Pae and Bradley E. Buchanan for their assistance in preparing this report.

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## CHAPTER II

### OBJECTIVES AND METHODS

It is critical for cities to have professional law offices that will represent their interests by vigorously defending them in court actions, by serving as counsel to the city as plaintiff in seeking to vindicate wrongs that have harmed the city and by counseling city agencies and departments to prevent problems.

However, any organization is only as effective as its internal procedures and policies allow it to be. The best of intentions can be undermined by a structure that does not allow these intentions to be put into practice or even communicated to the necessary parties. Administrative procedures and policies dictate how lawyers are hired, evaluated, paid, and promoted. They provide for assignment of cases to the Department's attorneys, research and monitoring of cases and how, and the extent to which support services such as paralegal time, word processing and secretarial services are allotted. In essence, the effectiveness of a public law office depends upon the substantive expertise of the attorneys and staff as well as the administrative procedures and policies that translate that expertise into tangible results.

Ten years ago, we reported on a Department that was not effectively representing the interests of the City of Chicago. We offered our recommendations and analysis as constructive criticisms in the hope that the City of Chicago would act to improve the quality of the representation that it was receiving. The purpose of our current study is to determine to what extent those improvements have taken place.

## Methodology

Between June, 1982 and March, 1984, we contacted nearly 650 lawyers, judges, aldermen, city officials, and community leaders. We obtained in depth information from over 300 of these individuals. We conducted personal interviews with representatives of the New York City Department of Law, the Minneapolis Department of Law and the Columbus, Ohio Department of Law. We received information from ten other city law departments through telephone interviews and mail surveys.

To implement our current study, we interviewed dozens of community leaders, aldermen and city officials. We interviewed Division Chiefs, Deputies, as well as current and past Corporation Counsels. We interviewed by phone representatives of 13 city law departments. We surveyed by mail state and federal judges sitting in Chicago who have had direct professional contact with Department attorneys. Of the 300 judges who were surveyed, 108 responded with a completed questionnaire and about a quarter (28) provided written narrative as part of their completed questionnaire.

In 1992, 1993 and 1994 we contacted nearly 500 lawyers, judges, members of the City Council, city officials and community leaders and received information from 200 persons with direct contact with the Department.

### CHAPTER III

#### DESCRIPTIVE PROFILES: PAST VIEWS OF THE CHICAGO DEPARTMENT OF LAW

The Corporation Counsel is the legal advisor under the Municipal Code of Chicago for the Mayor, the City Council, City officers and heads of City departments. Appointed by the Mayor with consent of the City Council, it is his/her duty to appear for and protect the rights and interests of the City, defend against legal actions and bring actions on its behalf. He/she also defends and brings actions on behalf of City officers, boards or departments as well as drafting, reviewing and enforcing ordinances. At the time of our study in 1983, the Department budget was nearly ten million dollars and the Department had approximately 140 attorneys. In 1994, the Department budget will be nearly twenty-three million dollars and the Department will employ 244 attorneys and a total of 432 employees.<sup>1</sup>

#### The History of the Department of Law: 1935 - 1972

The Office of Corporation Counsel was established in 1935. The office was appointed by the Mayor with the advice and consent of the City Council. It was to be the City's chief law officer and as such, superior to the elected City Attorney. Prior to 1935, there were separate offices of the Corporation Counsel, prosecuting attorney, fire attorney, the attorney for the Board of Local Improvements, and the water attorney.

In August, 1935 City Council abolished all previous established legal offices and created

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<sup>1</sup> City of Chicago Budget, 1994.

a single department of law with the Corporation Counsel as its chief officer. By the end of 1936, the Department of Law consisted of divisions of general counsel, personal injury, prosecuting and local improvements. By 1952, the major divisions were general counsel, torts, public improvements, ordinance enforcement, appeals and review and public utilities. In 1952 the first analysis of the Chicago Department was done by Robert W. Siebenschuh who was paid by the City to conduct the study. Its goal was to study the extent to which the Department efficiently discharged its functions.<sup>2</sup>

The author suggested in 1952 that the Department (1) improve the quality of investigation; (2) develop additional trial attorneys; and (3) improve the preparation of cases prior to the pretrial conference. He noted the large volume of tort claims and suggested, "that this is the type of situation in which administrative action should be substituted for judicial and legislative action." All claims would be reviewed in the first instance by a division within the comptroller's office.<sup>3</sup> The report also indicated that there was a confused pattern of supervisory relationships and suggested that in certain administrative areas, there was little effective supervision.

The study recommended that the policy of employing special outside counsel be discontinued except where it can be "clearly determined that the staff of the law department is

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<sup>2</sup> Robert W. Seibenschuh, The Department of Law, unpublished report (1952).

<sup>3</sup> Id. at 11-14.

not competent to handle a special problem."<sup>4</sup>

The authors concluded that on balance the quality of legal work in 1952 was good. The chief problem that the authors found was the patronage system of selection in assignment of personnel as well as a lack of an effective managerial hierarchy.

It must be noted that the study conducted in 1952 was paid for by the City, but perhaps more importantly, some of the problems that existed at the time of our original 1982-1984 study had been evident back in 1952.

#### The History of the Department of Law: 1973 - 1982

In 1982 we found a municipal law office in crisis. Criticisms of the Department had emerged in the media in increasing frequency for the previous ten years. In 1977, Alderman Dick Simpson had attacked the Department for having substantial numbers of attorneys with outside law practices. The 1977 press release stated, "Nearly 25% of the City's 115 assistant corporation counsels have outside law practices sufficiently active to require their own personal law offices."<sup>5</sup> Simpson called for "prohibition of this practice and questioned whether the law department can justify its budget of over 5.5 million dollars in terms of productivity or work quality."<sup>6</sup>

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<sup>4</sup> Id. at 11-12.

<sup>5</sup> Press release on file with the Chicago Council of Lawyers.

<sup>6</sup> Id.

Simpson also attacked the office on the quality of its lawyering. As for the responsibility of the Department to review proposed ordinances, he found that "many ordinances which are sent to the Corporation Council for an opinion by committees of the City Council disappear for months and even years, such as the five building code amendments from the Mayor's advisory committee."<sup>7</sup>

When Jane Byrne became mayor, a transition team report was issued, part of which dealt with the Chicago Department of Law. It was highly critical of the Department:

There are many flaws in the city's law department. It is poorly administered, inefficient, very expensive for the services performed, frequently rendered incorrect advice, takes no action on some important matters, loses major cases of great significance to the city, and it is staffed by many attorneys appointed more for their political connections than their skills, and more dedicated to their private law practices than to their city duties.<sup>8</sup>

The transition report was not the only document criticizing the Department in 1979. In an article written in The Chicago Lawyer, the Department was referred to as a "closed shop." In its editorial, The Chicago Lawyer stated that

There are many competent lawyers in the Corporation Council's office. But the office has suffered seriously over the years from the confusion of law practice with partisan politics..... within the office, advancement has depended upon acquiescence in the political system rather than solely on merit -- not only

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<sup>7</sup> Id.

<sup>8</sup> Report on file with the Chicago Council of Lawyers. The report also criticizes the Department's unwillingness to use clerks and paralegals.

affecting those in the office but impeding recruitment of able young lawyers.<sup>9</sup>

The article accompanying the editorial challenged the competence of the Department, citing slow operating procedures, poor flow of work and poor supervision.<sup>10</sup>

Another mayoral transition report was issued in May, 1983, soon after Harold Washington had become mayor. The authors recommended, "aggressive recruitment of new attorneys, and upgraded paralegal staff, and a comprehensive continuing legal education program." The report also identified internal management, use of outside counsel and evaluation of types of cases to be brought or defended as three areas in need of improvement.

#### The History of the Chicago Department of Law: the 1984 Report of the Council and the Fund For Justice

We began our comprehensive review of the Department in 1982, completed it in December, 1983 and released the Final Report at a press conference held in April, 1984.

Soon after taking office, Mayor Harold Washington appointed Mr. James Montgomery, who had a good reputation as a criminal defense lawyer, as the Corporation Counsel. He brought in as his deputy a partner at Jenner & Block, Jayne Barnard. Her job was to rebuild the Department of Law.

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<sup>9</sup> The Chicago Lawyer, Vol 2, No. 4 (1979).

<sup>10</sup> Other articles criticizing the Department include "Chicago Law Firm Draws Heavy Legal Fees From City Dealings," Chicago Sun-Times (June 20, 1982) and "Lawyers in the Chicago Law Department" (Editorial), Chicago Sun-Times (August 24, 1982).

Montgomery immediately began to reverse some of the undesirable policies practiced by his predecessors. In one of the decisions rendered that was to have perhaps the greatest impact on the office, Montgomery abolished outside employment for attorneys as of September 15, 1983.

At the time Montgomery became Corporation counsel, criticism of the Department was rampant and came from a wide variety of sources. It was common for aldermen to report that they did not utilize the Department for advisory opinions because inquiries were seldom or never returned. The Department saw itself as the lawyer for the Mayor and not for anyone else; consequently, the Department operated under the presumption that important inquiries came only from the Mayor and not from the City Council. Members of the City Council did not receive prompt responses to their requests for either advisory opinions or for draft legislation. It was also the opinion of some aldermen to whom we spoke in 1982 that there was an unwillingness on the part of aldermen to utilize the Department because of the perception that material contained in the request for opinion or request for draft legislation would not be kept confidential.

A number of aldermen in 1982 also criticized the way in which the Department handled its obligation to review proposed ordinances before they were approved or disapproved by the City Council. Proposed legislation that was unfavorable to the Mayor was allegedly buried so that months would go by without hearing from the Department as to legality of the proposed ordinance. This was a way in which mayors in the past purportedly used the Department as a

political tool at the expense of the aldermen and the City of Chicago.

### Community Groups and Community Leaders

The relationship between Chicago's community groups and the Department revolves primarily around the issue of housing and building court. The Housing Division of the Department prosecutes violations of the housing and building code in the Circuit Court of Cook County. It was the expressed goal of the Department in 1983 to encourage building owners to comply voluntarily with code requirements, rather than seek heavy fines or even jail sentences as a negative deterrent.<sup>11</sup> Some community groups preferred that the Department seek heavier fines and use the courts to collect them - a view that was also expressed in the Washington Task Force Subcommittee on Housing.<sup>12</sup> Thus, in 1983 there was often a clear difference of opinion between certain community groups and the Department as to what the Law Department should be doing.

### General Views of the Community

In 1982 and 1983 community leaders saw the Department as the law office of the Mayor and the Corporation Counsel as the Mayor's lawyer. The policies of the Department, which dictated its day-to-day activities, were set by tradition and there was great rigidity when it came to trying new things - unless the requester had proper clout.<sup>13</sup>

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<sup>11</sup> Interview with Division Chief, July, 1983.

<sup>12</sup> Report of the Building Code Enforcement Subcommittee, Housing Task Force, Washington Transition Team.

<sup>13</sup> Confidential interviews (1983).

Another trend was that there was a crisis in terms of the lack of proper legal advice then being given to City officials and City departments and agencies. There was considered to be a chronic lack of communication between the Law Department and the other City of Chicago departments and agencies. It was reported that when these departments and agencies needed legal advice, they often just ignored that need or transferred the problem to another agency.<sup>14</sup> The lack of adequate legal advice had an immediate impact (the departments were not receiving proper legal advice in the short term) and the agencies were not being counseled on the more long term approaches that would help them avoid problems.

Another common issue of concern among our 1982 community sources was the issue of referring cases to private counsel. While there was some legal work being done for the City by major Chicago law firms at no cost, the majority of the work was done at regular billing rates of these firms. In addition, it was also recognized that giving work to outside counsel was a form of patronage. Yet it was also generally recognized that it was quite possible that the Department would lose many of its big cases if it did not refer them to private counsel. There had been little emphasis on developing expertise in specialized areas within the Department, so that the Department was simply not capable in 1982 of doing some of the complex litigation that it needed to do.

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<sup>14</sup> When city departments needed legal advice and did not receive it from the Department, "they will take risks." Confidential interview (1983).

### Interviews with Private and Public Sector Attorneys

Our 1982 and 1983 interviews with private and public sector attorneys focused on attitude and personnel issues. Some complained that the Department pursued issues that had already been decided by the courts in actions filed much earlier. Others complained that the Department produced poor quality briefs and other written work product. Many of the lawyers related that the problems that they were having with the Department were often due to a lack of supervision of young attorneys and they complained bitterly about the lack of responsiveness by the Department attorneys during the discovery process and during settlement negotiations.

We found that the lack of good management resulted in a slowing of the discovery process - documents requested of City departments and agencies were often not produced. Some of this may have been purposeful to delay legal proceedings. Yet it was the opinion of many that it was frequently not tactical but a result of poor communications between the Law Department and its City agency clients.

### Summary

In general, our interviews with aldermen, business persons, lawyers and community leaders produced a variety of both positive and negative view points. On the positive side, some persons to whom we spoke believed that the Department in 1982 protected the basic interests of the City - that it was doing an adequate job in light of the enormous workload facing it and the political restraints inherent in its function as attorney for both the executive and legislative branches of government. But more often, the perceptions of the people to whom we spoke were

negative. Recognizing the problems facing all large city municipal law departments, the general view was that Chicago was not receiving the highest quality legal representation possible. Specifically, they raised warning flags about specific areas such as lack of adequate supervision, lack of development of expertise, lack of proper attention to hiring high quality attorneys, and a lack of attention paid to creative approaches in representing the interests of the City of Chicago.

### 1983 Survey of Judges

In 1983 we also surveyed judges who were presiding over cases in which Department attorneys represented the City. We surveyed judges of the Circuit Court of Cook County, the Illinois Appellate Court, the Federal District Court for the Northern District of Illinois and the Seventh Circuit Court of Appeals. The survey asked judges' opinions as to specific legal abilities of Department attorneys, beginning with pleadings and other writings, through pretrial activity and concluding with legal abilities in the trial setting. Each item corresponded to a particular legal ability and was rated by the judge respondent. The choices were excellent, good, fair, or poor. In all categories, more respondent judges answered either fair or poor than the number of judges answering good or excellent. Among the suggestions of the judges were that the Department's attorneys needed to demand more cooperation from other City employees and agencies (e.g., such as when documents or testimony was needed), that the Department's attorneys receive stricter supervision; that the clerical quality of the Department's work product be improved; and that the Department develop a more effective way of assessing whether a legal question be pursued, settled or dismissed.

## The History of the Chicago Department of Law: 1984 to Present

Since our 1983/1984 report, there have been four Corporation Counsels: James Montgomery, 1983-1986; Judson Miner, 1986-1989; Kelly Welsh, 1989-1993; and the current Corporation Counsel, Susan Sher. Each of these corporation counsels provided a unique contribution to the process which has resulted in the dramatic improvement of the Department.

James Montgomery in 1983 began to tap the private sector for legal expertise -- a model that would be used by his successors. He brought in Jayne Barnard, a partner at the law firm of Jenner & Block, to be the architect of the changes that Montgomery was to implement. Montgomery persuaded some top African-American partners in major corporate Chicago law firms to make a commitment to the City Law Department. They were brought in as supervisory attorneys who recruited, trained and supervised attorneys so that the Department could begin to bring in-house the work that it had been referring to outside counsel at exorbitant rates.

Montgomery's major contribution was that he began the process of transforming the Chicago Department of Law from a haven of patronage jobs and mediocre lawyering to a respected public law office. Large numbers of attorneys left the Department following the implementation of the outside practice prohibition. Evaluations were implemented, the office sought to improve the working conditions and, for the first time, supervision of lawyers became an important function within the Department.

In 1986, Judson Miner became the Corporation Counsel. Miner actively sought to

protect the budgetary interests of the Department in City Council proceedings. The office continued to seek out highly qualified attorneys from the private sector and convince them to make a commitment to the Department. There was active recruitment of attorneys clerking for state and federal judges. There was increasing levels of scrutiny of the quality of work being produced by the Department.

As the office became more professionalized and its reputation for higher quality work began to be established, higher quality attorneys, in turn, became attracted to the Department. By 1989, the Department had developed a reputation as an office that was protecting the interests of the City.

In 1989 Dick Simpson edited The Blueprint of Chicago Government: 1989 which was published by the University of Illinois at Chicago. The report cited the Council/Fund report produced in 1984 and then concluded the following:

Over the past five years, under James Montgomery and then Judson Miner, the Department has made progress in attracting lawyers with impressive credentials. The amount of funds used for outside counsel has been reduced, and some of the support services have improved. Still, the Department runs the risk of losing its best lawyers as well as its ability to attract better lawyers unless there is an increase in support staff.

To maintain and further the progress that has been made the Department should provide better supervision and hire additional secretaries and paralegals. It must continue to improve the computer system and hire the staff necessary to make it work.<sup>15</sup>

The report went on to recommend that a management study of the Department be

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<sup>15</sup> THE BLUEPRINT OF CHICAGO GOVERNMENT: 1989 (edited by Dick Simpson), Published by the University of Illinois at Chicago, at 144.

conducted to determine the exact number of additional personnel and the amount of equipment needed. It recommended an increase in the number of paralegals as well as administrative staff. It concluded that the Department should focus on providing more supervision and the training of staff attorneys and that private referrals should remain at low levels.<sup>16</sup>

Kelly Welsh replaced Judson Miner as Corporation Counsel in 1989. Welsh was a partner in the large Chicago law firm of Mayer, Brown & Platt. As such, he brought to a larger extent the model of the large private law firm to the Chicago Department of Law. One of his major objectives was to recruit chief assistant corporation counsels and deputy corporation counsels from the ranks of the large Chicago law firms. He successfully brought into the office highly qualified attorneys who brought new levels of expertise to the Department. Welsh also focused on protecting the Department in the City's budgeting process.

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<sup>16</sup> Id.

## CHAPTER IV

### CURRENT PROFILE

The Chicago Department of Law is divided into the following legal areas: Torts, General Litigation (primarily handling police defense matters only), Affirmative Litigation (which is responsible for more complex litigation and includes the utilities, revenue and environmental areas), Labor, Finance/Economic Development, Real Estate/Land Use, Building and Housing, Municipal Prosecutions, Traffic, Legal Counseling, Appeals, Tax, and Contract/Commercial Law. Chief Assistant Corporation Counsels supervise the various Divisions and Deputy Corporation Counsels supervise the Division Chiefs. A First Assistant Corporation Counsel is second in command.

The Department has offices at three locations - City Hall, 30 North LaSalle Street and the Traffic Court complex at 320 North Clark Street. The office facilities at 30 North LaSalle are particularly modern and offer good working conditions. The office facilities at City Hall are particularly cramped with carrels often taking the place of offices.

#### Hiring, Evaluation and Use of Outside Counsel

A large percentage of Assistant Corporation Counsels employed prior to 1983 were part of the political patronage system. Furthermore the hiring process at that time had resulted in the employment of only approximately 20 women attorneys out of a total of 200 attorneys and a nominal number of African-American and Hispanic attorneys.

In contrast, hiring at the Department today is done using a merit-based process. Applicants are required to submit a résumé, two writing samples, three references and a law school transcript. If a candidate is already admitted to practice law, the Department requires proof of good standing at the bar.<sup>17</sup>

The resume and writing samples of each applicant are reviewed by one of several attorneys who recommends to the Chair of the Hiring Committee whether the applicant should be interviewed. If an interview is scheduled, the applicant sees at least three attorneys, including at least one supervisory attorney. The Corporation Counsel and the First Assistant Corporation Counsel meet with the Chair of the Hiring Committee and the recruiting coordinator to consider the applicants available for vacant positions. The Corporation Counsel makes the decision whom to hire.<sup>18</sup>

To recruit, letters are sent to judicial law clerks, minority job fairs, local law schools as well as national law schools. While there is little money for face-to-face recruitment outside the Chicago area, the Department has been successful in attracting applicants from law schools throughout the U.S. There is a summer lawyer program.<sup>19</sup>

Newly hired attorneys are often assigned initially to ordinance enforcement, although this

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<sup>17</sup> Interviews with Corporation Counsel Susan Sher and First Assistant Corporation Counsel Duncan Harris.

<sup>18</sup> Id.

<sup>19</sup> Id.

is not a formal policy of the office. Of the last 26 lawyers hired, only nine came directly from law school graduation or from a judicial clerkship. The remainder had legal experience before coming to the Department.<sup>20</sup> The starting salary for attorneys without legal experience is about \$34,400 -- one of the highest starting salaries paid by public interest or government agencies.<sup>21</sup>

There is an informal lend-a-lawyer program through which private law firms have provided a lawyer for a time-limited basis to the Department -- usually to fill a specific need. Support staff within the Department are unionized.

Since 1983 there has been a dramatic improvement in the hiring of women and minority attorneys. Of the 238 Department attorneys in April 1993, 52% were women. Twenty-one percent of the legal staff are members of minority groups and 32% of the chiefs and deputies within the Department are members of minority groups.<sup>22</sup>

Before Jim Montgomery became Corporation Counsel in 1983, performance evaluation was nonexistent in the Department. An initial performance evaluation was conducted soon after Mr. Montgomery became Corporation Counsel. At present, a regular and organized performance evaluation system is in place and salary increases are tied to performance reviews.

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<sup>20</sup> Information supplied by the Department.

<sup>21</sup> Id.

<sup>22</sup> Figures generated by the Chicago Department of Law. Minority hiring by government law offices was the subject of "Government tops firms in building diversity" Chicago Lawyer, (July, 1993), at 1.

In the spring of each year performance evaluation forms are sent to all chiefs and deputies. In general, the Division Chiefs complete a first draft which is then reviewed by the Deputy responsible for the particular Division. The evaluation form evaluates on a number of points including legal ability and judgment. All evaluations are reviewed by the First Assistant Corporation Counsel to insure interdivisional equity.<sup>23</sup>

On the basis of the evaluation, attorneys are ranked from 1 to 5. Salary increases are affected by this ranking. The chief or the deputy goes over the evaluation results with each of the attorneys. If there is a response by the attorney, it is placed in the personnel file.<sup>24</sup>

The extent to which salary raises are tied to merit varies from year to year. The cost of living increase depends upon the union contract to some extent. The administration prefers a negotiated cost of living increase plus a merit increase, such as, for example, a three percent cost of living increase plus a zero to three percent merit increase.<sup>25</sup> In 1994, salary raises were based solely on merit.<sup>26</sup>

In 1983, the Department reported that 1.8 million dollars were spent for outside counsel. We noted in 1983 that this dollar figure was the official amount - newspaper accounts listed the

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<sup>23</sup> Interviews with Corporation Counsel Susan Sher and First Assistant Corporation Counsel Duncan Harris.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Information provided by First Assistant Corporation Counsel Duncan Harris.

amount up to five millions dollars. One reason for the discrepancy, according to our 1982 sources, was that there had been no public, systematic approach in assigning cases to private counsel. The result had been that persons outside the Department had found it difficult, if not impossible, to ascertain a current and accurate list of exactly who had received referred cases and for what amounts. We requested such a list from the Department in order to provide this information to the public and to help evaluate our suspicion that a substantial effort by the Department should be expended to build in-house expertise. The information that we received in 1983 established that the amount expended for private counsel was, in actuality, 2.2 million dollars in 1983 and 2.3 million dollars in 1982.

In 1993, we asked the Department for a list of who had received outside cases from the Department and for what amounts. In 1992, according to Department records, \$280,488.12 was expended on outside counsel, paid to a total of nine individuals and firms. The Department was able to give us the invoice dates, the amounts and the case name for each individual and firm receiving outside work from the Department.<sup>27</sup> The specific information can be found in Appendix A.

A full-time office manager was hired in 1990 and there is a library with computerized

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<sup>27</sup> Expenditures for outside counsel will vary from year to year. Furthermore, some costs for outside counsel will not appear in Department records. Certain funds expended on outside counsel are charged to the City department or agency benefitting from the outside representation. However, our sources confirm that the amount of funds expended by the Department on outside counsel has, in general, decreased substantially over the past decade. We note that extraordinary events, e.g., litigation stemming from the flooding experienced in the Chicago Loop area, may cause future expenditures for outside counsel to rise.

legal research capability. There are two positions for professional librarians.

### **Support Services and Training**

There is no annual report but there is an ongoing newsletter produced quarterly. It contains summaries of recent opinions and reports events important to the Department's staff.

There is no formal training program for newly hired lawyers. The Division Chiefs and Deputies with whom we spoke told us that training for the most part is on the job, although it is common for inexperienced attorneys to be paired with experienced attorneys. There are in-house seminars and lectures which are being established by a "Litigation Training Committee." One of the notable innovations for the office is the implementation of a multiple day trial advocacy program which is conducted annually and is mandatory for all litigation-oriented attorneys.

### **Descriptive Profiles: Divisions of the Chicago Department of Law**

We interviewed each Division Chief and all Deputies within the Department to ascertain a profile of the Division(s) to which they are assigned and their viewpoints on the strengths and weaknesses of these Divisions and of the Department as a whole.

#### **TORTS DIVISION**

There are approximately 35 lawyers in the Torts Division whose duties include representing the City in personal injury cases as well as property damage actions in the Circuit

Court of Cook County. A new Deputy overseeing the Division as well as two additional Division Chiefs have recently been hired.<sup>28</sup> In 1987 the backlog of the Division was 7,000 cases. This has been reduced to 3,600 cases.<sup>29</sup>

Paralegals are responsible for the initial preparation of a case and the seeking out of witnesses. There is a motion bank and there is a separate motion disposition group. A trial group deals with cases worth \$100,000 or more. The more senior attorneys are always assigned the most complex cases.

A team leader is always assigned to review the work of the lawyers involved. The motion disposition group first reviews cases and then prepares motions to dismiss when appropriate. It is the view of some that utilizing a separate motions disposition group can prevent cases from being settled early on -- that the Division would benefit from less separation of the motions and trial functions and that cases need to be more closely monitored from beginning to end. The Division intends to have fax modems available in the office so that computers in the Torts Division will be on line with those in the Daley Center. Settlement authority, the ability of attorneys to settle cases, depends upon the experience of the attorney involved -- beginning with \$1,000.

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<sup>28</sup> Information supplied by First Assistant Duncan Harris.

<sup>29</sup> Id.

## DIVISION OF REVENUE

The Division of Revenue was only about a year old at the time of our 1984 report. It was created to collect revenue that the City was in the past ignoring and to thereby use the Department to increase the City's income. The Revenue Division has now been incorporated into the Affirmative Litigation Division in order to enhance the Department's collection abilities. Attorneys in this area specialize in collection work in the areas of rent and other municipal assessments. The Department now sends high volume, low dollar collection cases to outside counsel, while keeping complicated cases in-house. This is exactly the opposite of the practice ten years ago. It was the view of some commentators that this process needs to be enhanced with the addition of experienced bankruptcy attorneys. The Department has recently hired a supervisor with substantial bankruptcy experience.<sup>30</sup>

In 1991 Department attorneys collected nearly eight million dollars in delinquent property damage payments, delinquent loan and concession fees and delinquent water payments.<sup>31</sup>

## TAX DIVISION

This Division was created in 1988. Its lawyers seek to recover unpaid City taxes. The Division performs both a litigation and a counseling function. It also has a legislative function

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<sup>30</sup>Information from the First Assistant Corporation Counsel Duncan Harris. In addition the First Assistant practiced bankruptcy law in private practice for more than fourteen years before joining the Department.

<sup>31</sup> Statement of the Department of Law to the Chicago City Council Committee on Budget and Government Operations. November 18, 1992.

in that it assists in writing City tax ordinances.

The Division was created out of a perception that tax enforcement had become an increasingly important function. There are a number of new taxes that have been implemented in addition to the property tax. There are approximately seven lawyers in the Division. The attorneys in this Division work with attorneys both in the Revenue Division and in the Legal Counseling Division.

In 1992, the Department reported that its attorneys had helped collect approximately nine million dollars in delinquent taxes and in 1991 helped recoup 11.6 million dollars. The Tax Division collected \$16.7 million in 1993. City attorneys also helped the Audit Division of the Department of Revenue recover a dramatic increase in delinquent taxes to enhance tax enforcement efforts.<sup>32</sup>

The creation of the Revenue and Tax Divisions is an expression of an acknowledgement that cities are corporations that need to be fiscally responsible, including the need to collect all accounts receivable.

### DIVISION OF HOUSING

This Division has approximately twenty-six attorneys and four paralegals. There are three structures within the Division. The first involves code enforcement cases having to do

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<sup>32</sup> Id.

with building court enforcement actions. Within this area are three types of calendars: Conservation, Criminal Housing, and Demolition. In addition to code enforcement, there is an ancillary section in which attorneys handle cases in the Chancery Division when a receiver has been appointed for a particular building. The third structure within the Division is the lien foreclosure section. Attorneys of the Division enter the case after demolition of a building which is sometimes paid for by the City. If so, the City is provided a statutory lien right in which it can place a lien on the owner -- a sort of mechanic's lien foreclosure in chancery where the City takes the property and sells it to recover the price of the demolition of the building.

Cases are not assigned to the attorneys; rather, the attorneys are located in the individual courtrooms and cases are assigned to each courtroom.

The Division cooperates with the Cook County State's Attorney's Office on a Chicago Abandon Property program which is funded through a grant from the Chicago Community Trust.

The Division also cooperates with the Chicago Police Department to implement the City's Narcotics Nuisance Abatement Program. Through this program, a building will be the subject of increased City inspections if the Chicago Police Department notifies the Department about a narcotics arrest within a building.

The Department reports that housing fine collections have increased by 400% in the last

four years.<sup>33</sup> In 1988 the total amount of fines collected in housing court was approximately \$239,200. In 1991 nearly \$850,000 was collected and during 1992, nearly one million dollars was collected.<sup>34</sup>

### REAL ESTATE/LAND USE

The Division has eight to ten attorneys, two permanent paralegals and one temporary paralegal.<sup>35</sup> Its duties include land acquisition by condemnation; alley and street vacations and dedications; special assessments; easements; selling of city urban renewal land to developers; negotiating purchases of land from private individuals; and a number of other real estate functions. The goal of the Division has been to keep as much work in-house as opposed to the past where much of the real estate and land use work of the City was given to outside counsel.

### MUNICIPAL PROSECUTIONS

This Division is responsible for City ordinance enforcement. Approximately 25 lawyers practice in branch courts throughout Cook County. There are two trial supervisors and three paralegals. One goal of this Division has been to increase the level of preparedness and to increase the number of written responses in cases. In 1991 the outlying branch courts were handling 1,000 cases in the area of ordinance prosecution. The majority of the attorneys in the Division have at least one year of experience, although municipal prosecution is a starting point

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<sup>33</sup> Figure supplied by the Chicago Department of Law.

<sup>34</sup> Figures supplied by the Chicago Department of Law.

<sup>35</sup> The Department has received approval for two more real estate attorneys and one more paralegal in 1994. Information supplied by the Department.

for many newly hired attorneys in the office. The Division has a brief bank in which copies of all filed briefs are placed.

Newly hired attorneys are appointed to the branch courts for about a year. When a vacancy occurs an attorney is brought downtown for more substantive cases which require more writing skills. The attorney may then be transferred to the outlying court for more substantive assignments.

There is a manual docketing system with no access to the court clerk's computers in the branch courts. Such a computer connection will save money and help efficiency.<sup>36</sup>

### LABOR DIVISION

This Division is responsible for cases before the Personnel Board, the Police Board, EEOC cases, Title VII litigation, labor and employment discrimination matters, including all cases before the Illinois Department of Human Rights. There are approximately 32 lawyers and 5 paralegals within this Division.

The City does employ outside counsel for direct negotiation with labor unions, but Department attorneys work closely with outside counsel. There are part-time lawyers within the Division.

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<sup>36</sup> The Division Chief of the Municipal Prosecutions Division would like to have her Division do more affirmative litigation such as civil RICO cases in state court. She also cited as part of her goals for the Division innovative cases being brought by the New York Corporation counsel's office on behalf of taxpayers. Interview with Division Chief, 1993.

Originally labor and personnel were separate from another Division whose attorneys handled grievances and arbitrations. In 1989 the two Divisions were merged. The Division is also involved in labor arbitrations under collective bargaining agreements.

#### DIVISION OF TRAFFIC

At the time of our 1984 report, there were 19 attorneys assigned to this Division, which operated under a cloud of allegations of corruption. Today there are two attorneys assigned to this Division who prosecute minor moving violations within the City of Chicago. The bulk of the prosecutions are conducted by law students operating in the courtroom under the supervision of an Assistant Corporation Counsel. There is a 300 page training manual and one lawyer supervisor who does training. There are fifteen students. Some students are hired for school credit; others are paid on an hourly rate.

#### CONTRACTS/COMMERCIAL LAW DIVISION

This Division reviews and negotiates all City contracts. It has approximately 12 lawyers and was created about five years ago in an attempt to bring more complex contract cases in-house.

#### FINANCE AND ECONOMIC DEVELOPMENT

In 1983 this Division did not even have a permanent Division Chief. We said in our report that it was important to the interests of the City of Chicago that this Division be operating at full capacity.

This Division is responsible for the areas of public finance, bond issues, economic development and enterprise zones. There are approximately 15 attorneys in the Division. Of these, the majority came from large Chicago law firms where they had developed solid skills and experience in finance and economic development matters. The Division is instrumental in providing guidance to the City on finance and economic development matters.

### APPEALS

This Division handles virtually all appellate litigation for the Department. In 1983, the Division was also responsible for drafting ordinances and opinion letters for City Departments and for the City Council. This counseling function has been transferred to the Legal Counseling Division.

Case intake is handled through a memorandum requesting that a case be appealed or through a phone call. The Division Chief and the Deputy confer to decide whether the case will be appealed.

The Division maintains a computerized docket system and a manually maintained brief bank.

### GENERAL LITIGATION

The approximately twenty-two lawyers and five paralegals in this Division represent the

City and its employees primarily in Section 1983 civil rights cases. Experienced attorneys are paired with less experienced attorneys and outside counsel is used only in conflict situations.

### AFFIRMATIVE LITIGATION

The Department first created an Affirmative Litigation Division in the 1980's to bring lawsuits on behalf of the City as plaintiff. Today, a more proper label for the Affirmative Litigation section would be Complex Litigation. Attorneys in this section are assigned to the more sophisticated cases, including environmental and utilities cases -- whether the City is plaintiff or defendant. Its work includes contract litigation, construction litigation, ordinance defense and enforcement, Constitutional litigation and zoning work, among other areas. The Revenue Division was incorporated into Affirmative Litigation in order to enhance the Department's collection capabilities.

### Public Utilities/Environment Sections of AFFIRMATIVE LITIGATION

Attorneys practicing in the public utilities area represent the City in proceedings before the Illinois Commerce Commission on such matters as proposed rate hikes requested by utilities.<sup>37</sup>

Less than three years ago the Mayor of Chicago created the Department of Environment.

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<sup>37</sup> Department attorneys were part of the negotiations which resulted in the recent settlement accord with Commonwealth Edison. The City had a unique interest in these negotiations. A reduction in utility rates means a reduction in the utility tax for the City as well as a reduction in franchise fees. The settlement represented a potential \$31 million dollar loss to the City in terms of reduction in utility tax and franchise fees. Edison agreed to pay the city this amount as a lump sum when the refund was made. See Chicago Lawyer (December 1993) at 20.

Department attorneys are responsible for environmental enforcement actions, which usually arise from Department of Environment inspections. Cases are typically filed against polluters in the Chancery Division. The Division's lawyers also advise different departments of the City on new regulations and how to come into compliance.

### LEGAL COUNSELING DIVISION

Attorneys within this Division review and draft legislation for aldermen and the Mayor. They also work with legislation pending in Springfield as well as Washington, D.C. The Division works directly with the Office of Intergovernmental Affairs.

Legal Counseling serves as general counsel to City departments and prepares advisory opinions and drafts regulations for City departments. This Division's lawyers offer legal opinions to aldermen at committee hearings. There are approximately five attorneys.

The Division keeps careful track of ordinances drafted for the Mayor or the aldermen and makes it a point to sit down with sponsors of legislation to discuss what was done and why.

This Division did not exist as a separate entity at the time of our 1984 report. Its creation, however, was one of our recommendations. Its existence has allowed the Department to improve dramatically the quality and response time to departments and agencies of the City of Chicago.

## CHAPTER V

### DESCRIPTIVE PROFILES: CURRENT VIEWS OF THE CHICAGO DEPARTMENT OF LAW

#### City Council

By Chicago ordinance, the Department of Law serves not only the Mayor but all departments and agencies of the City - including the City Council. Thus, the executive branch (mayoral) is required to serve the legislative branch (City Council). In our 1984 report, we reported that it was common for aldermen to claim that they did not utilize the Department for advisory opinions or for ordinance drafting because inquiries were seldom or never returned.

The unfortunate situation that existed in 1982 no longer exists. A separate Legal Counseling Division has been established as was recommended in our 1984 report. Our sources indicate that the Division is professional, unbiased and of high quality. Proponents and opponents of the current Mayor utilize the Legal Counseling Division of the Department for both advisory opinions and legislative drafting.

#### Legal Advice to City Agencies and Departments

In 1982, there appeared to be a crisis in terms of the lack of proper legal advice given to City officials and City departments and agencies. By 1993, there has been improvement but there is still need for improvement. Our sources indicate that the quality of legal advice being given to City departments and agencies has improved substantially and that communication between the Department and City departments and agencies has improved, as well. There are

numerous instances of cooperative ventures between the Department and the City departments and agencies, such as in the environmental and consumer areas. In addition, many Department attorneys see their function as advisors to City of Chicago departments and agencies. As such, Department attorneys often express to us their intent to work with agencies in order to help them prevent problems from occurring. The Department before 1983 did not see this function as part of its role.

However, we have also heard of some continuing communication problems between certain City agencies and departments and the Department. There have been some complaints concerning slow response time -- that agencies and departments are not informed about their cases in a timely manner.<sup>38</sup>

Some of our sources also tell us that while there appears to be high quality expertise at the supervisory levels, this knowledge does not always filter down adequately to the Department lawyers handling individual cases. There are some complaints concerning inconsistent quality of lawyering -- that at times the City is receiving high quality representation but will receive lower quality representation in the very next case.

Thus, while the situation has improved, there continue to be some problems with

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<sup>38</sup>The Department, in responding to these claims, indicates that "There is no consideration of the normal tensions between client departments and law departments common in large organizations with in house counsel. While it may be convenient to blame the Law Department for delay, our studies and those done by other City Departments do not support these claims."

Information supplied by First Assistant Corporation Counsel Duncan Harris.

inconsistent quality of lawyering, and some isolated communication problems between the Department and certain agencies and departments. In addition, there is apparently a continuing need for increased training and supervision for less experienced Department attorneys.

### Community Groups and Community Leaders

The Department today prides itself on dramatic increases in the amounts of fines levied against building owners.<sup>39</sup> However, some of those interviewed in 1993 had some reservations as to the extent to which the Department has improved its work in housing and building court. While these sources expressed their approval of an increased desire by the Department attorneys to seek higher fines, they voiced their displeasure at what they see as the Department's lack of effort at preventing the demolition of housing stock. These sources feel that seeking increased fines is a short-term solution to problems with unscrupulous landlords. But they note that a larger and more long term problem stems from the reduced availability of housing stock for low income persons. Some of these sources urged the Department to use other available remedies, not commonly used, to promote the rehabilitation of existing housing.<sup>40</sup>

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<sup>39</sup> Increases in the amount of fines levied and collected in building and housing court have been the subjects of press releases issued by the Department.

<sup>40</sup> In May, 1988, the Ad Hoc Coalition on Housing Court Reform sent to the Division Chief of the Building and Housing Division its "Recommendations of the Legal Processes Subcommittee Regarding Prosecution of Housing Court Cases." The purpose of the correspondence was to make a number of recommendations to the Law Department. The document urged the use of administrative hearings to reduce the number of cases on the housing court call -- a proposal then pending before the Chicago City Council. It also urged the Department of Law to "enter into a dialogue with community representatives to establish uniform, flexible prosecutorial guidelines, especially in the sensitive area of vacate orders."

(continued...)

Many of our sources who are concerned with housing indicated that Department attorneys are doing as well as can be expected given the large case volume. However, the issue of crushing caseloads in the housing area brings into issue the question of whether alternative dispute resolution can be better implemented in the housing court area.

We reported in 1984 that the Harold Washington transition team had recommended that an administrative procedure for building code cases be implemented. We also recommended that a more active and effective mediation program be utilized to help resolve housing related disputes. There are some who say that only with the power of the courts can building owners be forced to bring their structures into compliance. But the caseloads facing the Department in the housing and building courts are not conducive to creative approaches in preserving housing stock. Alternative dispute resolution techniques must be considered and utilized to divert the

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<sup>40</sup>(...continued)

Specifically, the group urged the Department to "continue and increase its commitment to the use of threatening alternative remedies such as enforced fines, receiverships, and target prosecutions of owners of multiple slum properties." The document noted that some building owners with sufficient resources avoid making necessary repairs. For these owners, according to the document, fines are "insufficiently persuasive." These buildings are often vacated and demolished. The document continued: "Other owners are faced with insuperable financial difficulties and choose to abandon their properties. These buildings too are eventually demolished....this policy does not make economic sense." The report went on to recommend increased resources for the Building and Housing Division of the Department...including the hiring of "community liaison attorneys."

The prosecutorial guidelines are detailed approaches offered to the Department as a means to promote rehabilitation of housing stock rather than see housing demolished. The suggestions included increased monitoring, the use of fines, and the use of receiverships.

The document praises the Department: "Despite the overwhelming workload discussed above, City attorneys have made great gains during recent years in prosecuting cases to force necessary repairs." The authors, however, believed "that this movement has not yet gone far enough."

more routine cases out of the court system.<sup>41</sup>

We also spoke to a number of sources familiar with areas such as public utilities, environmental concerns and consumer affairs. In most instances, there was general praise for the quality of the Department's work. Most noted the vast improvement in the Department over the past decade.

Our community sources in 1982 raised warning flags about several perceived Department shortcomings, including a lack of adequate supervision, lack of development of expertise, lack of proper attention to hiring the finest attorneys, and, in general, a lack of attention paid to creative approaches in representing the interests of the City. In 1993 and 1994, the warning flags are significantly fewer and smaller. Although some complaints about the Department still exist, the great majority of respondents had high praise for the quality of courtroom work and counseling that the Department provides.

### General Views

We spoke with a number of attorneys who either currently are, or recently were, employed with the Department. All agreed that the Department has made great gains over the past decade. Some to whom we spoke noted that the Department now provides excellent

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<sup>41</sup> see n. 40, supra.

representation to the City in legal areas in which the Department had no expertise ten years ago.<sup>42</sup> But some offered a number of constructive criticisms and recommendations.

- There needs to be increased numbers of high quality support staff, including paralegals. Current support staff, including the paralegal staff, needs additional training and professionalization.

While more computers and better computer software will make the attorneys more productive, we were told that more and higher quality support staff will increase the amount of time lawyers have for lawyering -- and that the quality of lawyering and the morale among the lawyers will improve as a result.

- All Divisions need to make better use of existing computer hardware and better computer software.

Computers throughout the Department need to be networked and certain computers within the Department and computers within certain City agencies and departments need to be networked (e.g., Housing Division and the City's Department of Buildings). The Department has hired an automation consultant to assist the Department in creating a strategy plan for

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<sup>42</sup> For example, there has been a dramatic increase in the collection of back taxes and other debts of the City. City attorneys have provided legal support for the financial and real estate aspects of several development projects such as the downtown circulator project, the Westside stadium redevelopment agreement, the Goldblatt's Building redevelopment agreement, the Reliance Building redevelopment agreement, the China Town Square project, the Central Station project and the River North project.

City attorneys have obtained important judgments against hazardous landfill operations and environmentally hazardous property. The Department has also worked with the Department of Consumer Affairs in attacking cases of consumer fraud.

Information supplied from the Chicago Department of Law.

automation resources.<sup>43</sup>

- The Department should develop and maintain a centralized recordkeeping and case filing system.

Case files too often are misplaced and evidence too often gets lost because recordkeeping is decentralized.<sup>44</sup>

- The Department should increase the number of Senior Assistant Corporation Counsel positions.

The Department has developed in-house expertise over the past decade, in part, by recruiting public interest lawyers with excellent reputations and, more recently, by recruiting partners from private Chicago area law firms. But the Department needs to keep the good lawyers that it has attracted and developed. To do so, it needs to be able to promote lawyers from within the ranks. We suggested in 1984 that the Department utilize Senior Assistant positions which would provide increased salary in exchange for more supervisory responsibilities. We were told in 1993 and 1994 that the use of these positions should continue to be used as a means of increasing the opportunities for promotion and, at the same time, increase the amount of supervision being provided to less experienced attorneys.

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<sup>43</sup>According to First Assistant Duncan Harris, this strategy plan for automation resources will "address computerization and automation throughout the Law Department and integration of Law Department system with other City systems (to the extent desired) and outside sources of data and information such as the courts, county records, legal research data bases and other online information."

<sup>44</sup>According to First Assistant Duncan Harris, the Department has received a "preliminary study done on a pro bono basis by the manager of the records department of a major Chicago law firm to assist us in updating our filing and records retention and management procedures and systems."

CHAPTER VI  
DESCRIPTIVE PROFILES OF THE CHICAGO DEPARTMENT OF LAW:  
A SURVEY OF JUDGES

To obtain the viewpoints of judges about the quality of work provided by the Department attorneys, in 1983 we surveyed by mail judges who have presided over cases in which Department attorneys represented the City. The surveys were mailed and returned anonymously and included both scaled and open-ended questions. We repeated this survey in 1993 using the identical questions and the identical scales. In 1993, 300 judges sitting in the Circuit Court of Cook County, the Illinois Appellate Court, the U.S. District Court for the Northern District and the Seventh Circuit Court of Appeals received the questionnaire. Of these judges, 108 returned completed questionnaires.<sup>45</sup> Results were coded anonymously and written responses to open-ended questions were compiled and analyzed.

The responses to scaled questions can be found in Table 1. Each item responding to a particular legal ability was rated by the judge respondent as excellent, good, fair, or poor. An undecided category was provided, but our analysis eliminates this category and only responses to the four possibilities are reported. The table includes a category "mean score." Excellent was coded a 1; good is 2; fair is 3; and poor is 4. The mean score is the average response. A higher mean score, then, corresponds to the higher numbers of the response -- toward fair and poor range. A lower mean score corresponds to the lower coded range -- toward excellent and good.

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<sup>45</sup> 141 judges returned completed questionnaires in 1983.

The judges' questionnaire paralleled the questionnaire provided to the judges in 1983. The first section dealt with writings, pleadings, motions and briefs. We asked the judges to rate the Assistant Corporation Counsel's abilities in the areas of response time, writing ability, legal reasoning and research thoroughness. The next section -- Pre-trial Activity -- involved an assessment in the areas of knowledge of case facts, willingness to settle out of court, ability to negotiate, accessibility of Department attorneys and willingness to cooperate in the discovery process. We also asked the judges to rate the Assistant Corporation Counsels in the area of trial activity.

Specifically, we asked the judges about knowledge of case facts, research thoroughness, courtroom demeanor, familiarity with rules of procedure and evidence, ability to prepare witnesses for trial, ability to examine and cross-examine witnesses at trial, appropriateness and quality objections made by Department attorneys during trial and quality of legal arguments made by Department attorneys during the trial. Finally, we asked the judges to provide an overall evaluation of Department attorneys.

**TABLE ONE: JUDICIAL SURVEY**  
**A COMPARISON OF 1983 AND 1993 RESULTS**

<u>Description</u>	<u>Item</u>	<u>1983 Mean</u>	<u>1993 Mean</u>
Writings, Pleadings, Motions, Briefs	Response Time	2.54	1.96
	Writing Ability	2.45	1.92
	Legal Reasoning	2.38	1.89
	Research Thoroughness	2.53	1.94
Pre-Trial Activity	Knowledge of case facts	2.28	1.68
	Willingness to settle out of court	2.53	1.98
	Ability to negotiate	2.58	2.03
	Accessibility of Department attorneys	2.69	1.56
	Willingness to cooperate in the discovery process	2.35	1.63
Trial Activity	Knowledge of case facts	2.12	1.67
	Research thoroughness	2.45	1.80
	Courtroom demeanor	2.09	1.38
	Familiarity with rules of procedure and evidence	2.17	1.94
	Ability to prepare witnesses for trial	2.53	1.89
	Ability to examine and cross-examine witnesses at trial	2.39	2.00
	Appropriateness and quality of objections made by Department attorneys during trial	2.59	2.06
	Quality of legal arguments made by Department attorneys during trial	2.38	2.00
Overall evaluation		2.53	1.98

While the overall evaluation mean score for the judges in 1983 was 2.53, the mean score in 1993 is 1.98. Thus, while in 1982 more judges rated Department attorneys as fair or poor than good or excellent, the opposite is true in 1993. In fact, in only two categories -- pretrial activity/ability to negotiate and trial activity appropriateness and quality of objections made during trial -- were the means scores over the 2.0 mark. In these cases, the mean scores were just over the 2.0 mark. In 1982 none of the mean scores were 2.0 or under.

Another point of distinction between the 1983 and 1993 survey results is the issue of preparedness. In 1983, the judges rated attorneys as less proficient in categories involving writings, pleadings, motions, briefs and pretrial activity than they did in categories related to actual trial activity. The judges in their narratives also discussed their perceptions that while the Department attorneys were adequate in their courtroom skills, they were not prepared and were therefore not representing their clients as well as they should. This was consistent with the feelings of lawyers to whom we spoke during the early 1980's who had professional experience with the Department. These lawyers also noted that Department attorneys were not preparing adequately. In 1993, there is no such trend that can be discerned from the results of the judges' questionnaire results. Furthermore, lawyers to whom we spoke likewise could not discern such a trend in 1993.

About one quarter of the judge respondents (28) provided a written narrative to further explain their responses on the scaled portion of the questionnaire. Though limited in number, the comments indicate that there has been a dramatic improvement in the quality of representa-

tion being provided by the Department over the past decade. While judges do point out that there are some Department attorneys who are better than others, they generally praise the Department attorneys who appear before them. For example, from a federal district judge:

In the early years the Department of Law was unbelievably poor. However, with Jim Montgomery and Jayne Barnard, there was a transformation which was almost breathtaking and it has continued to today. Today in my judgment, the Department of Law is tied with the U.S. Attorney's Office as the two best public law offices to appear before me.

The following is a quote from a Seventh Circuit Court of Appeals judge: "Years ago it was abominable. Of late, its work has been of high quality."

Some judges, while providing praise for the office's improvement since our last evaluation, offer some constructive criticism of the Department.

I have been pleased to see the office become more professionally competent and better prepared in their court appearances. I would suggest that the Office can further improve by allocating resources to provide better investigative support, especially in the tort and housing divisions.

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The Department of Law appears hamstrung by internal bureaucratic and administrative deficiencies and by City departments' lack of timely cooperation. The lawyers are bright and eager to litigate on behalf of the City, although sometimes to excess, resulting in overly combative tactics and behavior.

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The Corporation Counsels assigned to individual cases do a good job. Appears to be a waste of resources to have Corporation Counsels assigned to each criminal court in the First Municipal Division. The Assistant State's Attorneys could

easily handle the routine matters.

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I found assistants unwilling or unable to engage in common sense approaches to litigation problems. Judge in the Law Division.

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The major problem is too many cases yet an unwillingness sometimes to make reasonable settlement offers. Federal District Court judge.

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In general, judges we surveyed agree that the quality of representation provided by the Department has improved dramatically over the past ten years. There are some complaints concerning the lack of communication that sometimes occurs between the Department and City departments and agencies; some impressions that less experienced Department attorneys need additional training -- that while the supervisory staff is of high quality, this expertise sometimes does not reach the Department attorneys in the courtrooms; a perception by a few judges that the Department is not as willing to settle certain cases as soon as it should; and a perception by many judges that the Department is faced with huge caseloads in light of the limited resources that it has available to it.

CHAPTER VII  
OTHER PUBLIC LAW OFFICES: A COMPARISON

When we began our original assessment of the Department in the early 1980's, we sought the input from public law offices throughout the United States in order to obtain models to recommend to the Department. Many of the 33 recommendations that we provided in 1984 emanated from our personal and telephone interviews with representatives of public offices throughout the United States. In particular, we conducted extensive personal interviews and telephone interviews with representatives of the New York City Law Department.

In our 1994 assessment of the Department, we, once again, contacted municipal law offices throughout the country. We conducted extensive phone interviews with representative of the New York City Department of Law as well as with representatives of law departments in Minneapolis, Cleveland, St. Louis, Dallas, Philadelphia, Kansas City, Columbus, Ohio, Milwaukee, Indianapolis, Denver, Boston and Los Angeles.

In 1982 it was fair to say that many of these public law offices paid more attention to organizational detail than the Chicago Department of Law which resulted in a more effective use of human resources and a better quality of representation for their clients. But in 1993 the situation has changed. In general, the Department, insofar as day-to-day administrative procedures and policies are concerned, is as advanced as any municipal law office in any major U.S. city.

## New York City Department of Law

We reported in 1984 that the New York City Department of Law was exemplary, although prior to 1978 it was not providing high quality legal services. It suffered from many of the problems plaguing the Chicago Department of Law prior to the Harold Washington administration. During a transformation period of 1978 to 1981, the New York City Law Department relocated to more modern facilities and developed a non-political hiring system. There was a substantial increase in administrative support services. In 1982 there were 480 lawyers in the office with a budget of approximately 30 million dollars.

In a January 1981 article, the New York Times stated that, "New York City's corporation counsel... has implemented a series of far reaching innovations in the three years since his appointment and has turned the law department into a rarity among city agencies: it is making money for the City treasury." <sup>46</sup>

One of the recommendations that we had for the Department in 1983 came from a model program within the New York Department of Law - the affirmative litigation division. This division was comprised of lawyers with expertise in representing the City as plaintiff. Many of the cases that it brought affected social policy but was reportedly designed to increase revenue for the City.<sup>47</sup> In 1983, the New York Corporation Counsel noted that, "To adequately represent the interests of the City, the Law Department must not only engage in defensive work,

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<sup>46</sup> "Corporation Counsel wins suits and cheers," The New York Times, January 19, 1981.

<sup>47</sup> One action involved an attempt to force the federal government to reimburse New York City at an increased rate for medical care given to undocumented aliens.

it must affirmatively seek solutions to City problems."<sup>48</sup>

In 1993, the New York City Law Department employs almost 600 attorneys with support staff of 750. There are approximately 100 paralegals and 70 to 80 law students. The budget is about 66 million dollars. The office has expanded the number of positions that are referred to as senior litigators who are senior executives who do not have divisions reporting to them.

The merit-based hiring process utilized in 1982 has changed little. Most training is on the job but there is a trial advocacy program run once a year. The performance evaluation process is similar to that utilized by the Chicago Department but management employees are evaluated as well. Attorneys are required to keep time records.

Outside law practices are still forbidden and the office utilizes billing caps for the outside counsel in which it utilizes - \$150 an hour for a partner; \$100 for an associate and \$30 per hour for a paralegal. There continues to be a separate affirmative litigation division. A new attorney who is not yet admitted to the New York Bar is paid \$37,260 and on the first anniversary, the salary is increased to \$39,800.

#### Other Public Law Offices: A Comparison

Among the cities in our 1993/1994 sample, formalized hiring and performance evaluation

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<sup>48</sup> Keynote address by then Corporation Counsel, Frederick Schwarz, "Cities as Initiators of Affirmative Social Policy Litigation," Urban Affairs Seminars, Local and State Government Liability, March 17, 1983.

procedures exist in most law offices. Several continue to provide their attorneys a promotion track, and a merit pay program linked to evaluations exists in places such as New York City, Philadelphia and Los Angeles. Most of the offices in our study either utilize computerized case management to some extent or are considering it. Offices such as the Philadelphia Law Department and the New York City Law Department utilize paralegal services extensively but most utilize paralegals to some extent. In addition, the use of an office manager to coordinate administrative services was common among the law departments in the study.

Over the past ten years many of the public law offices that we have contacted have instituted new approaches. For example, in Minneapolis, a litigation committee comprised of senior litigators is available to less experienced litigators as a source of advice. The law department in Cleveland has utilized a legislative review committee through which proposed legislation can be reviewed by experienced attorneys. In Kansas City, the law department has utilized part-time attorneys to save costs and has utilized a risk management committee through which six city attorneys as well as city officials approve or disapprove settlement offers in pending legal actions.

The New York City law department has used a conferencing unit within its tort section to allow more experienced negotiators to deal with settlement negotiations. In Columbus, Ohio, a risk management program was devised in which city officials and city attorneys seek to identify and eliminate potential sources of liability before they become subjects of litigation against the city.

Finally, we noted in 1982 that some public law offices had instituted new types of alternative dispute resolution programs. In Minneapolis, Cleveland and Columbus, less serious misdemeanor complaints are diverted to a mediation program where mediators assist the parties in attempting to resolve the dispute short of a formal legal complaint. The Columbus Law Department in 1982 had added a new component in which potential civil disputes are diverted to this mediation procedure including such items as alleged building code violations. This night prosecutor program continues to exist, although it focuses mainly on misdemeanor charges.

All municipal law departments with whom we spoke addressed the issue of budget as a major problem confronting them. Lawsuits filed against the cities are increasing in number and are becoming more complex. At the same time, the law departments are constantly battling to maintain the budget level that they need.

**CHAPTER VIII**  
**A COMPARISON OF 1984 RECOMMENDATIONS WITH**  
**1994 POLICIES AND PROCEDURES**

Our 1984 report said "a modern city law office should be part of a city's fiscal as well as legal management; it must be able to defend the city in court action, bring suits on its behalf, and enforce its laws through vigorous prosecution. It must also be able to counsel city government and be involved in the legislative process so that problems do not arise or are reduced in scope." To create a public law firm upon which the City can depend we made 33 recommendations.

*The following is a listing of our major 1984 recommendations and a discussion of the extent to which each has been implemented.*

1. **1984: A four step hiring procedure should be employed.**

One of the first innovations implemented by the Montgomery administration was to implement a merit-based hiring procedure. As we suggested, a multiple step hiring process was implemented. This merit-based process continues today.

We had also recommended that a summer clerk program be implemented so as to improve the hiring prospects - a recommendation which has also been implemented.

2. **1984: A performance evaluation procedure should be employed.**

The Department utilizes an annual formalized performance evaluation which, as we

recommended in 1983, is linked to salary increases to the extent possible.

3. 1984: Paralegals should be hired using a merit system and should be utilized extensively.

The Department now makes more extensive use of paralegals than it did in 1984, particularly in the litigation divisions. The Department, however, needs more paralegals and there needs to be increased professionalization of paralegals currently employed, including increased training.

4. 1984: An office manager should be hired.

A professional office manager was hired in 1990. The importance of administrative functions within a large public law office cannot be underestimated - high quality lawyering must be accompanied by equally high quality administrative services.

5. 1984: A more effective organizational structure should be employed.

We stated in 1984 that a professional municipal law office must not only be efficient in the way it carries out its duties, but must also be efficient in representing the interests of the city. We recommended that the Department modify its current organizational structure. We recommended that:

- an executive committee comprised of the Corporation Counsel, Deputies and Division Chiefs meet regularly;
- that an Affirmative Litigation Division be added (a division of attorneys skilled representing the City as plaintiff as well as defendant -- so that the City can initiate legal complaints when necessary).

- that a triad system of management should be utilized through which each Deputy Corporation Counsel would supervise the Division Chiefs of one or more Divisions.

While the Department has tailored these recommendations, most have been implemented. Deputies work closely with Division Chiefs resulting in a productive flow of communication throughout the organizational hierarchy.

An Affirmative Litigation Division was created in the 1980's to provide the City of Chicago an opportunity to be represented both as defendant and as plaintiff. Today, its attorneys are assigned the more complex cases and the Revenue Division has been incorporated within the Affirmative Litigation Division in order to enhance the City's collection capability.

6. 1984: A legal counseling division should be established.

We said in 1984 that "critical functions of a municipal law office in terms of practical importance and statutory mandate include responding to the inquiries from departments and agencies of the City of Chicago; answering inquiries and drafting legislation for members of the City Council; and drafting legislation for the Mayor of Chicago. We recommend that these functions be located in a separate division, this division will have a division head, a senior assistant, and three or four assistant corporation counsels."

Today, a separate Legal Counseling Division does exist and our sources indicate that the quality and response time of the services provided to the Department to its clients have improved dramatically. In addition, the creation of this Division has allowed better monitoring of

legislation in Springfield and in Washington, D.C.

7. **1984: The Department should focus on professional development of attorneys.**

A. **The Department should provide adequate supervision.**

One of the major complaints we heard in 1982 was that inexperienced attorneys were not being provided the kind of supervision that they needed. In our 1993 and 1994 interviews, our respondents indicate almost without exception that supervision seems to have improved; however, there continue to be some complaints that because the caseloads are so great in certain divisions, less experienced attorneys sometimes do not know how to respond when extraordinary events occur.

B. **The Department should provide adequate promotion opportunities.**

We said in 1984 that "to attract high quality attorneys and to assure that the best attorneys are utilized effectively, we recommend that promotion opportunities be maximized. The Department should not exclusively hire its senior assistants, division heads and deputy corporation counsels from outside the Department as is done in some other city law departments."

Ten years later we note that the current Corporation Counsel, Susan Sher, was promoted from her First Assistant position, breaking the long time trend of bringing in the Corporation Counsel from outside the office. In addition, there have been a number of in-house promotions used to fill supervisory positions. Of the current 25 Chiefs and Deputies, 14 have been

promoted to their positions after serving in other positions within the Department.<sup>49</sup>

**C. The Department should utilize work teams as a part of a promotion track within each division.**

It appears to be common in the 1994 Department that experienced attorneys are paired with inexperienced attorneys as part of the on the job training process.

**8. 1984: Training program should be provided to the attorneys.**

In 1984, the Department was just beginning to put training programs into place. In 1994, there is no extensive orientation training program for newly hired attorneys. But in 1994 the Department has a trial advocacy program conducted on an annual basis particularly for attorneys in litigation sections. There are regular seminars within Division and there is a "Litigation Training Committee which is establishing a monthly in-house training program focusing on all aspects of litigation."<sup>50</sup>

**9. 1984: The Department should study new options for the Traffic Division**

We suggested in 1984 that the representatives of the Department of Law and the Traffic Court convene a task force to discuss better utilization of Department of Law personnel in traffic court. "Included should be a consideration of utilizing fewer assistant corporation counsels and/or the implementation of an administrative procedure for minor offenses."

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<sup>49</sup> Information supplied by the Chicago Department of Law.

<sup>50</sup> Information supplied by First Assistant Duncan Harris.

Since our report, prosecution of minor traffic offenses is now the responsibility of law students supervised by two Assistant Corporation Counsels. In addition, an administrative procedure to handle parking violations has been implemented as well.

10. 1984: Outside practice of law should remain prohibited.

We stated in 1984 that we agreed with the prohibition on outside law practice by the attorneys of the law department, an edict put into place by James Montgomery. In our 1993 interviews we heard a constant refrain that one of the most important changes implemented during the last ten years has been this prohibition on outside law practice.

11. 1984: Private Referrals should be minimized and monitored.

As we discussed earlier, in 1982 more than two million dollars annually was being expended by the Department on outside practice. In addition, little monitoring of these outside counsels occurred. Today, the amount of Law Department funds expended on outside counsel is reported to be less than \$300,000 annually. Certain funds expended on outside counsel are, however, charged to the City department or agency benefitting from the outside representation. The Department can provide detailed statements of the dates of its invoices and the case involved. Our sources indicate that, as we recommended in 1983, outside counsel works in each case with a representative of the Department staff. This allows the Department to monitor the outside work, the Department's attorneys to develop skills by working with a broader base of attorneys and the outside counsel to benefit from the Department's expertise in municipal law. In addition, the amount of payout by the City to outside counsel will be reduced if as much work

as possible is done by Department staff.

12. 1984: Pro bono relationships should be developed.

We recommended the City seek agreements with some of the larger private law firms so that associates from these firms could provide clerkships to the City for six month intervals. We also recommended that the Department seek arrangements with local law school clinics that would allow law schools to work with the Department in exchange for academic credit. Since our report, the Department has tapped the resources of the major Chicago law firms for training. The Department has also used an informal lend-a-lawyer program in which associates and partners in Chicago law firms provide a time-limited commitment to the Department in order to fill a particular need. In addition, law students now staff the courtrooms in the Traffic Division.

13. 1984: The Finance Division should be given a permanent division head.

This has not only been accomplished but the Department has made huge advances in the types of transactional cases that it can now do in-house.

14. 1984: A task force should study the use of alternative dispute resolution mechanisms.

Little has been done to divert cases away from the high volume areas through the use of alternative dispute resolution (ADR). Yet Department attorneys as well as those familiar with the work of Department attorneys complain that high volume caseloads are a major problem affecting the quality of representation being provided to the City of Chicago. The use of ADR

must be explored to reduce the caseloads in such areas as torts and housing. There needs to be a better initial review of cases and a system put into place to divert less important cases out of the system. The Department should work with the various courts in implementing these programs.

15. 1984: Internal Advisory Committees should be created.

We suggested in 1984 that a review board should be established to review and receive legal or administrative employee complaints about Department of Law procedures and policies.

This has not been accomplished on a formal level; however, the office today has a much stronger supervisory structure than it did in 1984. In addition, the atmosphere of the Department is that of a professional law office and not of a patronage haven. The result is that the internal procedures used by the office to handle complaints may be sufficient.

16. 1984: The Department should issue an annual report discussing accomplishment of the Department and providing accurate statistics.

We said that the Department has for too long operated without public exposure. To increase its accountability, we recommended that the Department issue an annual report which would highlight each Division of the Department and would include such statistics as numbers and cases brought by the Department, the number and cost of cases referred to private counsel, and other budgetary data. This has not been done.

17. 1984: The Department of Law should cooperate with the City of Chicago in establishing a risk management program.

We noted in 1984 that other cities, in responding to large jury verdicts and increasing litigation, had attempted to reduce their risks by seeking to identify and eliminate potential sources of risk. We recommended that the City of Chicago cooperate with the Department in establishing such a risk management program. We continue to think that this program should exist.

18. 1984: An in-house monthly newsletter should be written.

A quarterly newsletter is now printed, which includes case summaries as well as discussion of general events occurring within the Department.

17. 1984: The Department of Law should cooperate with the City of Chicago in establishing a risk management program.

We noted in 1984 that other cities, in responding to large jury verdicts and increasing litigation, had attempted to reduce their risks by seeking to identify and eliminate potential sources of risk. We recommended that the City of Chicago cooperate with the Department in establishing such a risk management program. We continue to think that this program should exist.

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A quarterly newsletter is now printed, which includes case summaries as well as discussion of general events occurring within the Department.

## CHAPTER IX

### 1994 SUMMARY and RECOMMENDATIONS

An overarching goal is to have a professional municipal law office that protects the interests of the City legally and financially.

We said in the 1984 Final Report that:

the City of New York has turned its office into an exemplary public law firm in less than five years, although it too struggles with problems such as how to provide adequate supervision with inexperienced attorneys while maintaining high quality legal practice. There is no reason to think that with changes in organization, hiring and strategic planning, the law office of Chicago could not become an exemplary office as well.

In reviewing the results of our work, we found a dramatic improvement in the quality of representation being provided to the City of Chicago over the past decade. The majority of our 1984 recommendations have been implemented and the Department has implemented other reforms. The Department has been transformed from the disgrace it was prior to 1983 to one of the finest municipal law offices in the country. The Department's lawyers are generally professional and conscientious. The majority of the lawyers and judges who we contacted told us that the Department usually does top quality work -- and that it can serve as a model for other public law offices. Like many public law offices, however, the Department needs to continue to work on assuring that top quality legal services are provided by all of its employees all of the time and to maintain the other gains that have been obtained.

There continue to be reports of inconsistent quality of lawyering. Some commentators

report that City agencies and departments are not being informed adequately about the legal actions in which they are involved. Other sources tell us that the Department needs more and better support staff. But, in general, there has been over the past ten years an impressive transformation.

This transformation has taken place because Corporation Counsels were appointed for the purpose of creating an exemplary public law office. They tapped the public interest law sector and the private legal sector for talented lawyers who brought their expertise to the Department and their ability to impart their expertise to other lawyers. The Department has benefitted from substantial budget increases and implemented some creative approaches to providing legal services to the City.

However, the Department must continue to improve and to do so, it needs more resources. We argued in 1984 that a good law department will generate revenue for Chicago and, in addition, save the City millions of dollars each year. Unscrupulous contractors, for example, will be penalized for their actions. Good legal defense will minimize what the City must pay to resolve legal problems. This argument is still true today. Providing resources to the Department is a good investment for the future.

The following are our 1994 recommendations:

- A. **THE NUMBER OF PARALEGALS AND ADMINISTRATIVE SUPPORT STAFF SHOULD BE INCREASED.**

Use of paralegals makes the use of attorney time more effective and efficient. While the

Department now utilizes the services of paralegals, we recommend that the Department hire additional paralegals using, as it currently does, a merit-based hiring process.

We also recommend that additional clerical support staff be hired, using its existing merit-based hiring process. The Department operates with a crushing caseload. While we note with approval that there are more personal computers being allocated to individual attorneys in the Department, the office needs additional support staff to help maintain the increasing workload. To the extent that individual members of the support staff are not performing at an adequate professional level, the Department should focus on documenting specific shortcomings to make sure they are adequately addressed.

Paralegals and administrative support staff can allow the lawyers to do more lawyering and less caseload management functions.

1. **To supplement existing paralegal staff, the Department should utilize more law student assistance.**

The Department already utilizes law students in its Traffic Division. The Department should seek additional formalized arrangements with Chicago area law schools. Law students would benefit greatly from the hands-on experience they would receive and the Department would benefit from the enthusiasm and diligence brought by the students. To the extent that funding such a program is a problem, the Department should seek a course credit arrangement with Chicago area law schools.

- a. **The Department should consider using law students in its Municipal Prosecutions Division.**

The Department uses law students in its Traffic Division. Many of the court calls covered by lawyers in the Municipal Prosecutions Division are also high volume and less complex. The Department should evaluate using law students in its Municipal Prosecutions Division in the same way it has successfully used them in the Traffic Division.

2. **A formal case filing system should be employed.**

Our sources tell us that too much time is being spent locating case files, evidentiary documents and other written materials. The Department would benefit from establishing procedures for setting up and maintaining files and implementing a system through which case files could always be found.

- a. **The Department should better utilize computer hardware and software.**

Computers within the Department should be networked and there should be modem connections between the Department's computers and computers at selected city departments and agencies (e.g., between the Housing Division and the Chicago Department of Buildings). The entire information management system of the Department should be evaluated, including whether additional computer software is appropriate. We note with approval that the Department has hired an automation consultant.

**B. THE TORTS DIVISION WOULD BENEFIT FROM LESS SEPARATION OF THE MOTIONS AND TRIAL FUNCTIONS. CASES NEED TO BE MORE CLOSELY MONITORED FROM BEGINNING TO END.**

Utilizing a separate motions disposition group, as the Department now does, can prevent cases from being settled early on. In addition, our sources tell us that the Division would benefit from closer monitoring in light of the large caseload.

**C. THE DEPARTMENT OF LAW SHOULD CONTINUE TO FOCUS ON PROVIDING SUPERVISION.**

In 1983, one of the more frequent complaints we heard through our personal interviews and surveys was that inexperienced Department attorneys did not seem to be adequately supervised. Our 1993 interviews and surveys indicate that, in general, the level of supervision provided by the Department has improved substantially. Yet there are complaints that the quality of lawyering provided by the Department is inconsistent. In an office that relies upon a corps of relatively inexperienced attorneys, the amount and quality of supervision continues to be a critical factor. We believe that the quality of supervision being provided to staff attorneys by the Division Chiefs should be an important variable used when evaluating Division Chiefs.

It is important that not only the expertise and individual legal talent of Division Chiefs and Deputies be tapped, but that their ability to supervise and train other less experienced attorneys be considered important skills as well. The expertise possessed by the Division Chiefs and Deputies must be made available to the Assistant Corporation Counsels.

**The Department should continue to focus on serving the needs of its clients.**

The Department has improved substantially over the past decade in terms of serving the needs of City departments and agencies. The Department today more closely utilizes the model of lawyer/client in dealing with individual departments and agencies. But the Department, according to many of our sources, needs to monitor legal activities more closely and inform agency or department managers more regularly about the progress of their cases.

**D. THE DEPARTMENT OF LAW SHOULD CONTINUE ITS CURRENT PRACTICE OF MAXIMIZING PROMOTION OPPORTUNITIES.**

The Department has tapped its own ranks, private sector law firms and other public law offices to fill supervisory positions. To continue to attract high quality attorneys and to assure that the best attorneys are utilized effectively, the Department should continue its current practice of first considering in-house attorneys to fill higher paid supervisory positions.<sup>51</sup> In an office the size of the Chicago Department of Law, there is room for attorneys in supervisory, managerial type positions who are from private law firms, public law offices, and from within the ranks of the Department itself.

**The Department should seek to increase the number of Senior Assistant Corporation Counsel positions.**

These positions offer additional compensation and supervisory responsibilities to attorneys

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<sup>51</sup> Of the current 25 Division Chiefs and Deputies, 14 were promoted to their positions after serving in other positions within the Department.

Information supplied by the Chicago Department of Law.

whose job performance warrants a promotion. The Department will benefit from 1) the increased opportunities to promote worthy attorneys and from 2) the additional supervision that Senior Assistant Corporation Counsels provide to Assistant Corporation Counsels.

**E. THE DEPARTMENT OF LAW SHOULD CONTINUE TO PROVIDE AN OPPORTUNITY FOR INTER-DIVISIONAL TRANSFERS.**

The opportunity for inter-divisional transfers that the Department has provided is welcome. But we recommend that inter-divisional transfers be used more systematically as (1) a means to recruit attorneys by providing an opportunity to be exposed to a variety of areas of law; and (2) a means to capitalize on its effort to develop legal talent by allowing individual attorneys to move from less complex, routine cases, to a more complex practice of law.

**F. MORE TRAINING SHOULD BE PROVIDED TO THE ATTORNEYS.**

Over the past decade, the Department of Law has attracted attorneys with extensive expertise. On the job training is an important part of utilizing that expertise in order to train lower level staff attorneys. But we recommend that there be additional training programs implemented so that this expertise assembled by the Department can be even better relayed to the staff attorneys. This is particularly important for newly hired, less experienced attorneys.

We applaud the initiation of the trial advocacy training program implemented by the Department. We applaud the addition of a "Litigation Training Committee" which is establishing monthly in-house training programs. We also believe that additional training, supervision and "mentoring" is necessary. In addition to increased in-house training, we

recommend that the Department continue to tap Chicago area law firms for training materials and mentoring -- including personal injury law firms to provide training for attorneys in the Torts Division.

**G. THE DEPARTMENT SHOULD CONTINUE ITS PRACTICE OF MINIMIZING AND MONITORING PRIVATE REFERRALS.**

In 1984 we noted that a major subject of media attack on the Chicago Law Department had to do with referring cases to outside counsel. This practice has been reduced substantially. In addition, the Department today, unlike ten years ago, has collected and made available details associated with each referral. In addition, when outside counsel is used, an assistant corporation counsel is assigned to work with the outside counsel as part of the arrangement. We recommend that these procedures be continued and that the number of referrals continue to be minimized. When there is a private referral, however, we urge that the Department consider the same sort of billing caps utilized by the New York City Department of Law.

**H. THE DEPARTMENT SHOULD ISSUE AN ANNUAL REPORT DISCUSSING THE ACCOMPLISHMENTS OF THE DEPARTMENT OF LAW AND PROVIDING ACCURATE STATISTICS.**

The Department should be proud of the accomplishments it has made over the past decade. It has, however, operated too long without adequate public exposure. To increase its accountability, we recommend that Department issue an annual report which will highlight the accomplishments of each Division of the Department and include statistics such as number of cases handled by the Department, the number and cost of cases referred to private counsel and other budgetary data. There are many who say the improved quality of representation that the

Department has provided over the past decade has yielded a vast increase in monetary resources for the City. This needs to be documented.

The City's financial condition is enhanced not only when the Department prevails in a lawsuit brought on behalf of the City to right a wrong, but also when high quality defense work decreases the amount of money that the City must pay as part of a settlement or judgment. These statistics need to be analyzed and presented in an annual report so the public knows what it is getting for its tax dollars, and the City Council and Mayor's office have the information they need to make sound budget decisions. Public law offices rely upon the political process for their budgets. The Department must be able to document that the City will get back more than it provides if there is an adequate investment in the Department of Law.

As part of the gathering, analysis and presentation of financial statistics, we believe that the lawyers should be required to keep timesheets to the extent necessary to collect the necessary statistics.

**I. DEPARTMENT OF LAW SHOULD COOPERATE WITH THE CITY OF CHICAGO IN ESTABLISHING A RISK MANAGEMENT PROGRAM.**

As we discussed in our 1984 report, other cities, in responding to large jury verdicts and increasing litigation, have attempted to reduce the risk by seeking to identify and eliminate potential sources of conflict. We recommend that such a program be developed between the Department and other City officials.

## CONCLUSION

We issue our report to praise the office for its accomplishments and we offer our recommendations in the spirit of constructive criticism so that the Department will not only maintain its current level of operation but will be able to improve upon it as well.

## APPENDIX A

Expenditures Paid to Outside Counsel, the Chicago Department of Law  
for 1992

(information supplied to the Chicago Council of Lawyers and the Fund  
For Justice by the Chicago Department of Law)

OUTSIDE COUNSEL SUMMARY (THROUGH 12/92)

<u>NAME OF FIRM</u>	<u>AMOUNT PAID</u>
Alan R. Borlack	\$3,251.00
Brian L. Crowe	\$14,532.00
Foley & Lardner	\$71,405.00
Gessler, Flynn, Fleischmann, Hughes & Socol, Ltd.	\$83,138.00
Jones, Day, Revis & Pogue	\$84,755.72
Mayer, Brown & Platt	\$442.00
Earl L. Neal & Associates	\$21,732.00
Schiff, Hardin & Waite	\$548.00
Seliger, Stephen G. Ltd.	<u>\$584.40</u>
TOTAL:	\$280,488.12

ALAN R. BORLACK

INVOICE DATES

AMOUNTS

CASE NAME

(dates actual  
work performed)

5/92 - 10/29/92

\$3,250.50

Kinzer

(Law Department)

BRIAN CROWE

<u>INVOICE DATES</u>	<u>AMOUNTS</u>	<u>CASE NAME</u>
(dates actual work performed)		
5/19/92 - 3/6/92	\$ 701.25	Lambert
1/9/92 - 3/11/92	\$2,533.75	Simpson
3/5/92 - 4/28/92	\$ 661.25	Lambert
3/1/92 - 4/24/92	\$3,007.15	Simpson
5/6/92	\$ 41.25	Lambert
12/18/91 - 1/3/92	\$ 206.25	Lambert
12/5/91 - 12/31/91	\$ 587.50	Simpson
7/1/92 - 8/1/92	\$2,018.75	Lambert
10/6/92 - 10/30/92	\$2,026.25	Simpson
6/1/92 - 7/31/92	\$1,178.75	Simpson
5/4/92 - 6/24/92	\$ 840.00	Simpson
8/3/92 - 8/31/92	<u>\$ 730.00</u>	Simpson
TOTAL:	\$14,532.15	

(Law Department)

FOLEY & LARDNER

<u>INVOICE DATES</u> (dates actual work performed)	<u>AMOUNTS</u>	<u>CASE NAME</u>
12/91 - 4/92	\$ 3,082.97	General Matters
12/91 - 4/92	\$17,794.93	Comm Ed - F u e l Adjustments
5/1 - 6/30/92	\$10,215.30	Byron I Comm Ed
8/1/92 - 10/31/92	<u>\$40,312.07</u>	Byron I Comm Ed - F u e l Adjustments
TOTAL:	\$71,405.27	

(Law Department)

GESSLER, FLYNN, FLEISCHMANN, HUGHES & SOCOL, LTD.

INVOICE DATES

AMOUNTS

CASE NAME

(dates actual  
work performed)

7/91 - 9/92

\$83,138.17

Sloniec v. City  
Jarnigan v.  
City & Fire  
Steve Rogers  
v. City  
Bitton v. City  
Porter v. City  
Turner v. City

(Law Department)

GORDON AND GLICKSON

INVOICE DATES

AMOUNTS

CASE NAME

(dates actual  
work performed)

6/19, 6/25, 7/23/91

\$100.00

Kinzer

JONES, DAY, REAVIS & POGUE

<u>INVOICE DATES</u> (dates actual work performed)	<u>AMOUNTS</u>	<u>CASE NAME</u>
10/91	\$ 6,839.25	Slumlords
2/92	\$ 6,775.20	Slumlords
5/12/92	\$ 7,212.10	Slumlords
5/12/92	\$48,309.04	Bell Matter
5/12/92	\$ 4,481.75	Fields Matter
7/14/92	\$ 4,637.38	Slumlords
7/1/92 - 7/31/92	\$ 1,525.00	Slumlords
8/1/92 - 9/29/92	<u>\$ 4,976.00</u>	Slumlords
TOTAL:	\$84,755.72	

(Law Department)

MAYER, BROWN & PLATT

INVOICE DATES

(dates actual  
work performed)

2/90

AMOUNTS

\$441.60

CASE NAME

Maxicare

(Law Department

EARL L. NEAL

INVOICE DATES

(dates actual  
work performed)

1/92 - 9/92

AMOUNTS

\$21,731.90

CASE NAME

Southwest  
Transit

(Law Department)

SCHIFF, HARDIN & WAITE

INVOICE DATES

AMOUNTS

CASE NAME

(dates actual  
work performed)

3/1/92 - 3/31/92

\$548.43

Baja

(Law Department)

SELIGER, STEPHEN G LTD

INVOICE DATES

(dates actual  
work performed)

11/7/91 - 5/27/92

AMOUNTS

\$584.40

CASE NAME

Nicholos v.  
City

(Law Department)