



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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**LAW DEPARTMENT POLICE EXPERT
– AND “LEGAL EAGLE” –
GAIL DONOGHUE RETIRES
AFTER 21 YEARS OF PUBLIC SERVICE**

SPECIAL COUNSEL DONOGHUE WORKED ON SEVERAL OF THE CITY’S MOST IMPORANT CASES, INCLUDING THE SUBWAY BAG INSPECTION CASE AND THE HANDSCHU CONSCENT DECREE, THUS HELPING TO MAKE THE CITY SAFER; DONOGHUE ALSO LED EFFORTS TO PROTECT CENTRAL PARK’S GREAT LAWN

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New York, May 30, 2008 – After 21 years serving New York City, Law Department Special Counsel Gail Donoghue has announced her retirement. Donoghue, a fierce, passionate litigator, worked on many of the City’s most important police cases, especially since Sept. 11th, including the MacWade subway bag inspection case and the Handschu consent decree. Her input shaped many of New York City’s most important legal decisions affecting security and criminal justice issues. She also worked on other large legal matters, including protecting Central Park’s Great Lawn.

“Gail is one of the finest lawyers with whom I have ever worked,” said Corporation Counsel Michael A. Cardozo. “She is a great legal thinker, a passionate and devoted advocate and one of the truly great leaders of the Law Department.”

In her role as Special Counsel of the New York City Law Department – and a member of the Law Department’s Executive Staff – Donoghue oversaw more than 140 lawyers in the Special Federal Litigation and Family Court Divisions. She also advised the Corporation Counsel on matters relating to the Police Department and the criminal justice system.

“Gail Donoghue is – quite simply – a superb lawyer,” said S. Andrew Schafffer, Deputy Commissioner for Legal Matters at the New York City Police Department. “She is intelligent, hard working and highly perceptive about the nuances of legal issues as well as the dynamics of litigation. She has represented New York City and the NYPD with great skill and unending dedication in a long succession of important matters – and has done so with extraordinary grace as well. Gail is widely admired and respected by her peers and by the judiciary, who recognize in her the best traditions of lawyering in the public interest. We will miss her greatly.”

Florence Hutner, Deputy Commissioner for Legal Matters and General Counsel for the Department of Correction and the Department of Probation, also had extensive experience working with Donoghue. “Gail Donoghue has long been a staunch advocate for the City and its agencies,” Hutner noted. “Her extensive experience and her willingness to understand the needs and interests of complex agencies, including the Departments of Correction and Probation, have made her an effective representative. Gail’s integrity, caring and strategic thinking will be missed.”

Even her competitors – who often strongly disagreed with the City on its security and police positions, including on some of Donoghue’s biggest cases, and brought spirited debate to many public issues – remember her as a formidable rival.

Commenting on her departure, New York Civil Liberties Union (NYCLU) Associate Legal Director Christopher Dunn, who was Donoghue’s direct adversary in several high-profile cases that the NYCLU brought against the NYPD, said: “Gail has been on the opposite side of many disputes we have had with the Police Department, but we have always respected her as a tough advocate for the City. Having dealt with Gail for many years on a wide range of police issues, I know her departure will be a big loss for the Law Department.”

A Passion for Law

Before becoming an attorney, Donoghue was a stay-at-home mother, raising two daughters who now have successful careers of their own. But typical of her desire to keep life diversified, Donoghue embarked upon a law career. In 1980, she graduated *cum laude* from Pace University Law School. At Pace, Donoghue was the “Casenote and Comment Editor” of the inaugural issue of the Pace Law Review. In 1983, she received an LL.M. in Taxation from New York University School of Law.

After two years of teaching at Pace Law School, Donoghue joined the law firm of Warshaw, Burstein, Cohen, Schlesinger and Kuh, where she specialized in commercial litigation. It was in 1987 that she joined the Law Department.

As a harbinger of things to come, Donoghue – in her first role as a staff attorney in the Real Estate Litigation Division – created the first litigation support database in the Law Department. She also quickly developed an interest in the litigation and trial of civil rights actions brought against the City. She represented the City in several major cases with the potential for high-liability exposure.

From 1989 to 1995, Donoghue was a Deputy Assistant Chief in the Administrative Law Division, where she was responsible for coordination of that division’s Section 1983 civil rights cases. When the Law Department’s Section 1983 cases were merged into the General Litigation Division in 1995, she joined General Litigation as an Assistant Chief.

In September 1998, Donoghue was selected by former Corporation Counsel Michael Hess to become the first Chief of the Special Federal Litigation Division. Her mission in that capacity was to create from scratch a specialized division that could provide quality representation for the City and its officials in civil rights actions brought in federal court. “Through proactive management initiatives, she addressed the problems presented by high-volume caseloads litigated in the exacting forum of federal court and helped improve the division’s quality of representation,” Michael Cardozo, the current Corporation Counsel, noted.

As the new chief, Donoghue created systems and protocols for the division’s effective and efficient work. Attorneys and paralegals in the division were, and still are, individually assigned to each case from inception, with the foreseeable critical documents requested from the clients within the first few weeks of a case. “This methodology and others produced a professional and equipped staff, which has been acknowledged by the federal courts in which the division practices,” Cardozo added.

In April 2002, Corporation Counsel Cardozo named Donoghue to his Executive Staff. In her new capacity as Special Counsel, she focused on management issues while maintaining direct supervision of two divisions, Special Fed and Family Court.

Special Federal Litigation Division

In her role overseeing Special Fed, Donoghue worked closely with Chief Muriel Goode-Trufant and Deputies Frances Sands and Heidi Grossman to handle a substantial volume of cases in a complex, ever-changing area of law. The Federal courts in which division attorneys exclusively practice maintain stringent standards and enforce strict deadlines. Division attorneys handle active caseloads and are responsible for all aspects of litigation preparation, from the initial interviews of named defendants to investigation, discovery and trial by jury, and they receive substantial trial experience. Due to the high-profile nature of their work, many division attorneys litigate actions that attract extensive press coverage

or are the subject of public debate. During Donoghue's tenure, the division grew not only in size, but in case complexity, handling numerous class actions, policy issues and other high-profile matters. She has offered a steady hand and keen insight to lawyers and all staff handling these complex federal cases.

"Gail is the consummate litigator, developing legal theories from the earliest possible moments and making complex concepts understandable to all," noted Goode-Trufant. "It has been an absolute pleasure working with her – and having her as my mentor. She instilled excellence, tenacity and strong work ethic in the members of the Special Federal Litigation Division, and her legacy will endure for decades to come."

Family Court Division

In her role overseeing the Family Court Division, Donoghue has played a key role in designing and implementing many improvements that have been made to the juvenile justice system. She was instrumental in the development of the evidence-based risk assessment instrument, which assists decision-makers like judges and Law Department's attorneys in assessing the risk level presented by juvenile offenders. In addition, she works closely with Family Court Division Chief Larry Busching, Deputy Chief Angela Albertus and their staff to ensure the division runs smoothly and effectively. The division's mandate – protecting the community while balancing a juvenile offender's needs and potential for rehabilitation – is a tough balance, but Donoghue's input over the years has helped many youth on the road to a new life. Finally, Donoghue's involvement with the Interstate Child Support Unit has been critical. As the unit developed many new policies and procedures, she has assisted in allowing it to efficiently collect support for needy children.

"Gail was instrumental in helping me better define the role of the Family Court and its involvement in the community," said Family Court Chief Larry Busching, who joined the Law Dept three years ago. "She has made a significant impact during a time of change in the juvenile justice system. I continue to view Gail as the consummate example of a public servant."

Significant Cases

When circumstances dictated, Donoghue "took the reins" directly and litigated in court, particularly on significant matters.

"Many of the cases I have worked on have been the subject of strong public debate," she noted. Notable among these were the Great Lawn case, the subway bag inspection litigation and the modification of the Handschu Guidelines. All of these were great to work on and the outcomes had important consequences for the city and its people." She noted, "This was particularly true with respect to the Great Lawn in Central Park."

Some further details:

- **Great Lawn Case** – Central Park's Great Lawn was in seriously degraded condition as a result of overuse in the 1980s, with some comparing it to the infamous "Dust Bowls" of 1930s. The Great Lawn was later restored in the mid-1990s at an immense cost, both in terms of public funds and private contributions, and has become a green oasis for all New Yorkers, especially young people who use the ball and sports fields. "When it was announced that the Republican National Convention would be held in New York, many groups wanted to demonstrate," recalled Donoghue. While a supporter of freedom of speech, Donoghue noted that "one group requested a permit to hold a demonstration for over 100,000 people. The Parks Department believed this demonstration would cause substantial damage to the lawn, and the City offered a march around Madison Square Garden as an alternative." The organizers then sued the City, claiming that the decision not to allow a large demonstration on the lawn was politically motivated. They also expressed disappointment at what they argued was a limit on free speech. The City countered by noting that demonstrations were being held all over the City in other venues, including other parts of Central Park. The City succeeded in presenting to the court facts about what it felt was the appropriate use of the lawn. It convinced the court to deny the plaintiffs' request for a preliminary injunction, which would have allowed the group to hold the mass rally and possibly damage it. "Whenever I go by the Great Lawn, I feel that I made a contribution to the New York we all love so much," noted Donoghue.

- **McWade Bag Search Case** – This was a legal victory that, in the City’s and Donoghue’s opinion, will help protect New Yorkers from terrorist violence for years to come. In December 2005, U.S. District Court Judge Richard M. Berman ruled that subway bag searches are constitutional. The decision recognized the importance of random bag inspections in deterring terrorists from bringing explosives into the transit system, and increasing the security and safety of the millions of people who use it daily. The NYPD started the Mass Transit Bag Inspection Program, also called the Container Inspection Program, in late July 2005, after terrorist attacks on transit systems in Madrid, Moscow and London. Under the program, the NYPD conducts random visual bag inspections throughout the City’s transit system, in an effort to deter and detect terrorist attacks. Five plaintiffs, represented by the NYCLU, sued the City in a case called *MacWade v. Kelly*, claiming that the searches violated the Constitution. Donoghue lead the legal team to victory. The judge wrote in his decision that “the Container Inspection Program is an effective measure to help deter and detect a terrorist attack against New York City’s subway system.” He also noted, “The need to prevent a terrorist bombing of the New York City subway system is a governmental interest of the very highest order.” The win was later upheld on appeal.
- **Handschu Consent Decree Case** – Handschu was a case where the City sought to loosen restricts on the NYPD to investigate criminal and terrorist activity in the context of political activity. The restrictions had been in place since 1985 under a legal “consent decree” (a judgment entered by consent of all the parties in a litigation whereby the defendant agrees to stop certain activities without admitting wrongdoing or guilt). In 2003, the City sought to modify the decree, which was named after Barbara Handschu, a political activist and lawyer named in a large class action against the City. In February 2003, a federal court judge modified the decree to do away with the old, restrictive regulations and replace them with more permissive ones. The case was fascinating from a legal perspective – and, according to the legal team, it had great personal poignancy for many people. In Donoghue’s view, the decree, as it existed, had become dangerously unworkable after Sept. 11th, forbidding the police to investigate political or religious activity unless they had actual evidence of criminal activity. In cases where terrorism was being planned within the fold of an ostensibly political or religious group (as history has sometimes shown to be the case), that requirement essentially meant that the police had to wait until terrorists had acted before they could take steps to investigate them. That requirement had to be changed, in the City’s view, and Donoghue was successful in persuading the court to make the needed modifications. Since then, the Law Department has been back to court with the NYCLU on a potpourri of new challenges relating to the decree. For example, in 2005, the judge ordered the PD to “change its surveillance practices at events where people gather to exercise their First Amendment rights.” Each side continues to advocate its position passionately with regards to the decree.

Mentor and Teacher

Donoghue has long had an interest in continuing legal education and has been very active in preparing and offering training within the Law Department and through professional Continuing Legal Education providers. She has given instruction to district attorneys and police officers as well as lawyers. She is a member of the faculty for Practising Law Institute’s Conferences on Section 1983 Civil Rights Litigation and Municipal Law, and the Georgetown Conference on Section 1983.

For many years, she served as a faculty member in continuing legal education programs at the City Bar Association . She is an active member of both the New York County Lawyers Association, on whose Board of Directors she now sits, and the City Bar Association, where she presently serves on a legal committee. She is also the co-author of “Life After Brown: The Future of Constitutional Tort Actions in New York,” which appeared in the *New York School Law Review* in 1998. In 2003, she was the recipient of the New York County Lawyers Association Municipal Affairs Award for Outstanding Public Service. In 1994, she was the recipient of The Corporation Counsel's Special Recognition Award.

Donoghue, a native New Yorker, received her undergraduate degree from Fordham University. As noted, she also graduated *cum laude* from Pace Law School and holds an LL.M. degree in taxation from New York University School of Law. She resides in Manhattan with her second husband, Paul Gallo. Together, they have three daughters, Victoria, Ann and Tenaya; a son, Christopher; and five grandchildren, Nicholas, Jeremy, Andrew, Sophia and Eliana. Donoghue and Gallo have been married for 20-plus years.

Donoghue's Private Interests and The Future

A Law Department internal newsletter article last week described Donoghue as “trailblazer, mentor, litigator, defender, fly fisherwoman, photographer, cyclist, mother, grandmother and friend.”

The story noted that Donoghue uses her strategic mind as a lawyer in some unconventional ways – fly fishing, for example. She has fished with her husband, Paul, in remote areas in Montana, Utah, among other places. Another side the public misses of Donoghue is her athletic prowess – she cycled almost every day to and from work from her Upper West Side apartment, often in snow, rain and bitter cold.

When asked what she will do with her spare time once she is retired, Donoghue told the Law Department's newsletter, *Hearsay*, that her first order of business is to spend the month of June fly fishing. She also intends to reopen her photographic darkroom at home and travel. There is also talk that she might even write a book – literally another chapter.

Donoghue was recently asked to reflect upon her at the Law Department -- and what drew her to the office. “I have enjoyed every minute of the 21 years I've spent here representing the City, supporting its policies and programs, and working with the men and women who have committed themselves to public service,” she noted.

Donoghue added, “I am also grateful that I can look back on my career and feel great pride and satisfaction in the work I have done. As far as I am concerned, no amount of money could equal the rich and rewarding experience I have had as a City lawyer. Six years ago, I had the good fortune to be selected by Michael Cardozo as a member of his executive staff. This time has been very special because of his leadership and commitment to public service. He gave me the opportunity to grow in ways that enriched my professional life. I leave feeling my time was well spent, and I have had a great run.”

We couldn't agree more.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department has an active caseload of 90,000 matters and transactions in 17 legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's 690 attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. For more information, please visit nyc.gov/law.

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