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## INTRODUCTION

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## INTRODUCTION

ROSS SANDLER\*

During the spring of 1993, before his Commission had issued its final report on police corruption, Judge Milton Mollen<sup>1</sup> agreed to present a short talk about the work of the Mollen Commission<sup>2</sup> at New York Law School. Out of that talk came the idea for a day-long symposium entitled *Police Corruption, Municipal Corruption: Cures at What Cost?* The focal point was to be a post mortem discussion of the Mollen Commission Report and, we thought, an evaluation of a new permanent police anti-corruption commission which, by the date of the symposium, was certain to have been established and in business. But government decision-making is never so simple. When March 30, 1995, the date of the symposium arrived, the Mollen Commission Report had spawned not one but two rival commissions. First, the City Council, over the Mayor's veto, created an independent commission to investigate police corruption.<sup>3</sup> The Mayor, by executive order, then created a competing commission under his control.<sup>4</sup> Neither functioned, although the Mayor had at least appointed members to his commission. Both variations of the Mollen Commission proposal had adherents and detractors. The City's five District Attorneys and the Police Department lined up solidly behind the Mayor, while Judge Mollen found himself publicly opposing the Mayor and allied with the City Council which, in his view, had more conscientiously followed the Mollen Commission's recommendations.

The symposium, as a result, changed from a post mortem analysis to a current event. The elegant Ernst Stiefel Room at New York Law School overflowed as more than 250 people attended, including about a dozen of the current high brass of the New York Police Department, many of whom were in uniform. All the main actors in this municipal drama attended, among them former Mollen and Knapp Commission members,

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1. Judge Mollen was the presiding judge of the New York Appellate Division for the Second Judicial Department before being appointed Deputy Mayor of Public Safety in 1990 by then-Mayor David Dinkins.

2. The Mollen Commission was appointed by Mayor David Dinkins in 1992 to look into allegations of corruption in the New York City Police Department. See N.Y., N.Y., Exec. Order No. 42 (July 24, 1995).

3. See Peter F. Vallone, Speech: *The City Council's View of Independent Oversight of the Police Department*, 40 N.Y.L. SCH. L. REV. 13 (1995).

4. See Paul A. Crotty, Speech: *The Corporation Counsel's View of Independent Oversight of the Police Department*, 40 N.Y.L. SCH. L. REV. 23 (1995).

judges, the current and three former police commissioners, the Speaker of the City Council, and, as late additions to the program, the Corporation Counsel and the chair of the Mayor's version of a police review board.<sup>5</sup> Had they desired to, these officials might have settled the issue on the spot; however, the gap could not be bridged merely by a visit to academe. The dispute dividing the opposing factions turned not on police corruption, but on division of power between the Council and the Mayor.<sup>6</sup> The Mayor, in his veto of the Council's commission, had argued that an independent commission of the type created by the Council undermined executive authority as granted by the City Charter. The Council, decisively overriding the Mayor's veto, relied on its broad legislative powers which, it retorted, sufficed to create an independent commission to investigate police corruption. On the day of the symposium the partisans of the two camps were in open legal maneuvers preparatory to litigation, with the result that the presentations at the symposium bore remarkable similarity to appellate oral arguments.

The debate over Charter powers moved to the State Supreme Court on April 18, 1995 when the Mayor filed a lawsuit against the Council and asked that the local law creating the independent commission be invalidated.<sup>7</sup> The Justice assigned to the case insisted that the Mayor and Council try to settle their differences as a condition before she would rule on their cross motions for summary judgment.<sup>8</sup> But the gap proved unbridgeable; issues of political turf and Charter powers dominated over police corruption. When the parties reported failure, the Court promptly ruled against the Council and in favor of the Mayor, finding that procedures protecting mayoral powers required a referendum before the Council's local law could become effective.<sup>9</sup> Since there had been no referendum, the local law creating the independent police review board was void.<sup>10</sup>

As of publication, six months after the Court's ruling, the Mayor and Council still have not resolved their differences. An appeal has been filed

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5. See *Judges Will Discuss Corruption 'Cures'*, N.Y. L. J., Mar. 10, 1995, at 2.

6. See *Mayor of New York v. Council of New York*, No. 402354, 1995 WL 478872 (N.Y. Sup. Ct. June 30, 1995), *appeal docketed*, No. 95-3710 (1st Dep't N.Y. App. Div. Nov. 16, 1995).

7. See *id.*; see also Jonathan P. Hicks, *Mayor Takes Council to Court On Independent Police Panel*, N.Y. TIMES, Apr. 19, 1995, at B2.

8. See Daniel Wise, *Police Review Board's Constitutionality Argued*, N.Y. L. J., June 6, 1995, at 1.

9. See *Mayor of New York*, 1995 WL 478872.

10. *Id.*

by the City Council,<sup>11</sup> but the two sides are engaged in active discussion, hoping to resolve their differences outside of court.<sup>12</sup> Meanwhile, the Mayor's panel created by executive order limps along as the only lawful commission to investigate police corruption.<sup>13</sup>

Symposia in academic settings shortly trail public decisions, not lead. This symposium on police and municipal corruption, however, convened fortuitously while the choice was still in flux. The record of the symposium thus becomes an historically important, contemporaneous document, not merely an after-the-fact analysis. With positions hardened, and with resolution seemingly unachievable, the partisans in turn took to the microphone and made their cases. Persons attending the symposium experienced the tension of "real-time" debate of a current, unresolved issue; they sat as judges, not historians. The tension and currency felt that day have been captured and retained in the printed version produced by the *Law Review*. More than legal briefs and veto messages, the symposium directly exposed the difficulty of managing police authority, pursuing integrity, and maintaining separation of powers. As a public issue, police and municipal corruption will not disappear, but this symposium has done much to illuminate the issue. This symposium issue of the *Law Review* preserves the debate and reveals the issues as no other contemporaneous event or writing could.

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11. *Mayor of New York v. Council of New York*, No. 95-3710 (1st Dep't N.Y. App. Div. Nov. 16, 1995).

12. Telephone Interview with Richard Weinberg, Chief Counsel of the New York City Council (Oct. 11, 1995).

13. See William K. Rashbaum, *Panel to Use Computers To Track Cop Corruption*, N.Y. NEWSDAY, May 11, 1995, at A36 (discussing the newly appointed panel's efforts to investigate police corruption despite the legal battle between the Mayor and the City Council).

