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SYMPOSIUM SPEECHES | THE MOLLEN COMMISSION AND BEYOND

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SPEECH

THE MOLLEN COMMISSION AND BEYOND*

HON. HAROLD BAER, JR. **

I am glad to be here today and I want to thank Dean Wellington¹ for giving Ross Sandler² some really needed support to get symposia like this off the ground. In writing down my thoughts on police corruption in preparation for this speech, I found I became somewhat more critical than I used to be on the subject. My statements, I hope everyone will understand, are only meant to foster constructive change.

For the first time in the hundred year history of police corruption investigations, the Mollen Commission³ did something a little different. It was an effort to approach the problem with the hope of ending these apparent twenty-year cycles of police corruption scandals.⁴ Previously, each investigation came about as a consequence of outcries disparaging the conduct of men and women entrusted with the health and safety of New Yorkers.⁵

* Judge Baer delivered these remarks at a symposium sponsored by the New York Law School Law Review in conjunction with the New York Law School Center for New York City Law on March 30, 1995 entitled *Police Corruption, Municipal Corruption: Cures at What Cost?* [hereinafter Symposium].

** United States District Court Judge, Southern District of New York. Judge Baer was also a member of the Mollen Commission.

1. Harry Wellington, Dean of New York Law School, 1991 to present.

2. Ross Sandler, Professor and Director, Center for New York City Law, New York Law School.

3. See N.Y. CITY COMM'N TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE ANTI-CORRUPTION PROC. OF THE POLICE DEP'T, COMM'N REP. (July 7, 1994) (Milton Mollen, Chair) [hereinafter MOLLEN COMM'N REP.].

4. See *id.* at 149 (describing historical pattern of police corruption and underlying Commission considerations for reformation).

5. See, e.g., REP. OF THE COMM'N TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE CITY'S ANTI-CORRUPTION PROC. (Dec. 26, 1972) (Whitman Knapp, Chair) [hereinafter KNAPP COMM'N REP.]; *Hearing Held at the United States Court House, Foley Square, New York, N. Y., Mar. 14, 1951 before the Senate Special Comm. to Investigate Organized Crime in Interstate Commerce*, 82nd Cong., 1st Sess. 975 (1951); SUP. CT., APP. DIV., FIRST JUD. DEP'T, FINAL REP. OF SAMUEL SEABURY, REFEREE, IN THE MATTER OF THE INVESTIGATION OF THE MAGISTRATE CTS. IN THE FIRST JUD. DEP'T AND THE MAGISTRATES THEREOF, AND OF ATTORNEYS-AT-LAW PRACTICING IN SAID CTS. (Mar. 28, 1932) (Samuel Seabury, Referee) [hereinafter SEABURY REP.]; REP. OF THE SPECIAL COMM. OF THE BOARD OF ALDERMAN OF THE CITY OF N.Y. TO INVESTIGATE THE POLICE DEP'T (June 10, 1913) (Henry H. Curran,

Generally, these outcries were heard every twenty years or so beginning with Lexow in 1894.⁶ Each of the investigations found more than they bargained for and sometimes other governmental entities tried desperately to circumscribe their powers. In fact, the governor back in 1894⁷ refused to sign the request by the senate for the \$30,000 they needed to get their investigation off the ground.⁸

Similarly, in the Mollen Commission, we recommended a continuing oversight mechanism for the Police Department.⁹ The Mayor failed to act and then vetoed legislation passed by the City Council which created such a continuing oversight board.¹⁰ The Council then voted forty-one to eight to override the Mayor's veto.¹¹

The recommendations from past investigators concentrated on better methods by which to investigate and root-out bad cops. While this is a laudable goal, it is to a large extent akin to the way in which we have approached our penal system over the last century. More and more legislators pressured by scared constituents have championed enhanced sentences. Little change has resulted. Few, if any, studies suggest that the increased use of minimum mandatory sentences has reduced recidivism,¹² and all agree that in these days of fiscal restraint they have pushed our jails and penitentiaries to the breaking point.¹³ In the same

Chair) [hereinafter CURRAN COMM. REP.]; REP. AND PROC. OF THE SENATE COMM. APPOINTED TO INVESTIGATE THE POLICE DEP'T OF THE CITY OF N.Y. AS TRANSMITTED TO THE LEGISLATURE (Jan. 18, 1895) (Senator Clarence Lexow, Chair) [hereinafter LEXOW COMM. REP.].

6. LEXOW COMM. REP., *supra* note 5.

7. Roswell P. Flowers, Governor of the State of New York, 1892-94.

8. LEXOW COMM. REP., *supra* note 5, at 9-14 (the Lexow Committee reprinted the gubernatorial veto of the State Senate Appropriations Bill that would have provided funding to investigate police corruption).

9. MOLLEN COMM'N REP., *supra* note 3, at 148-57.

10. See Jonathan P. Hicks, *Council Creates Police Monitor, But Giuliani Plans to Ignore Vote*, N.Y. TIMES, Jan. 20, 1995, at A1, B4 (stating that the City Council voted to create an independent agency to guard against corruption even though the Mayor had vetoed an earlier Council vote which created an independent agency).

11. *But 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) (holding that the New York City Council's attempt to create the Independent Police Investigation and Audit Board violated the New York City Charter).

12. See generally Gary Lowenthal, *Mandatory Sentencing Laws: Undermining the Effectiveness of Determinative Sentencing Reform*, 81 CAL. L. REV. 61, 72 (1993) (discussing the exploding prison population as a result of mandatory sentencing).

13. See *id.*

way, simply adding another level of bureaucracy with more investigators to ferret out police corruption has never and will never do the trick. Like enhanced sentences, it is the easy fix which satisfies the public but fails to make a lasting improvement. If this was the answer, there would have been no need for a new investigation every twenty years.

As I said before, the Mollen Commission's emphasis was a little different. It was an effort to approach all aspects of the problem of police corruption.¹⁴ We investigated corruption allegations,¹⁵ and discussed with law enforcement representatives different oversight modalities,¹⁶ and agreed that investigative efforts were necessary; necessary, as both Mike Armstrong¹⁷ and Joe Armao¹⁸ have mentioned, for the small group of corrupt cops. We were also sure that the Police Department had to have the major role in weeding out corruption,¹⁹ but we were equally certain that some outside entity had to be continuously aware and concerned about what the Department was doing to fight corruption in its ranks.²⁰

These recommendations were the more traditional part of the equation, similar, to some extent, to the special prosecutor's office that grew out of the recommendation from Mike Armstrong and the Knapp Commission.²¹

We were anxious to explore another level of the problem, to look at some of the root causes of corruption, and, if discoverable, to delineate what they were and to include a study of these culture problems amongst

14. See MOLLEN COMM'N REP., *supra* note 3, at 4-8.

15. *Id.* at 7-9, 11-15 (describing the methods the Commission used to reach its conclusions and recommendations, including conducting field investigations; reviewing case files; interviewing police officers as well as local, state, and federal law enforcement officials; conducting hearings on corruption control; interviewing private citizens, criminal defense attorneys, alleged victims of corruption, and criminal informants; and holding discussions with police management and corruption experts).

16. *Id.*

17. Michael F. Armstrong, Chief Counsel to the Knapp Commission. See generally KNAPP COMM'N REP., *supra* note 5, at 35-60 (discussing the history and methodology of the Knapp Commission). Mr. Armstrong also participated in the Symposium. See Michael F. Armstrong, Speech: *Police Corruption: An Historical Overview*, 40 N.Y.L. SCH. L. REV. 59 (1995).

18. Joseph P. Armao, Chief Counsel to the Mollen Commission. See generally MOLLEN COMM'N REP., *supra* note 3, at 1-10 (discussing the commission's methodology and findings). Mr. Armao has also contributed to this issue. See Harold Baer, Jr. and Joseph P. Armao, *The Mollen Commission Report: An Overview*, 40 N.Y.L. SCH. L. REV. 73 (1995).

19. MOLLEN COMM'N REP., *supra* note 3, at 7, 149.

20. *Id.* at 7, 152-57.

21. *Id.* at 72 n.10; see KNAPP COMM'N REP., *supra* note 5, at 35-38.

the tasks of the independent oversight entity.²² It became the Commission's view that some of the corruption in the Department came about as a result of certain views and procedures in the Department.²³ Whether we were right remains to be seen, but clearly, valid theories support our conclusions.

Probably most important amongst these entrenched and seemingly immutable Department problems, has to do with the training the Police Department provides.²⁴ The academy, for instance, is a requirement for each and every recruit. While the recruits may have had other educational experiences, this is where they must go to learn to be police officers. Even the nationally recognized cadet program at John Jay College of Criminal Justice²⁵ cannot serve as a substitute.

As we discovered, the anti-corruption curriculum consisted in large part of a twenty-year-old movie²⁶ and according to one or more witnesses, instead of being a training ground to deter corruption, the Police Academy was where some recruits first learned about being corrupt.²⁷ Probably the most unfortunate aspect of the training at the police academy is the drafting of the new recruits into the "we against them" tenet of police work.²⁸ Recruits graduated from the academy almost as if Thomas Hobbes had been their professor and instilled the concept of a nasty and brutish citizenry, and a short career²⁹ for any cop that left the academy with a different view. This approach fostered the

22. MOLLEN COMM'N REP., *supra* note 3, at 149; *see also id.* at 110-28 (determining that the core causes of corruption include police culture and management, command accountability, internal investigations, deterrence and sanctioning standards, and community outreach concerns).

23. *Id.* at 70-110 (discussing, among other problems, the ineffective field supervision of police officers, willful blindness, the supervising officers' fear of disclosing corruption within the department, and the overall collapse of the department's corruption controls as part of the causes of corruption in the department).

24. *See id.* at 58-60 (discussing the problem that veteran officers taught recruits that the "ordinary citizen fails to appreciate the police").

25. *See generally* Gerald W. Lynch, *Make College a Cop Requisite*, N.Y. DAILY NEWS, June 21, 1995, at 25 (discussing the City University of New York/New York Police Department Cadet Corps Program where cadets receive training at John Jay College of Criminal Justice once a week).

26. *See* MOLLEN COMM'N REP., *supra* note 3, at 108.

27. *See id.* at 55.

28. *See id.* at 51, 59.

29. *See* THOMAS HOBBS, *LEVIATHAN* 76 (Edwin Curley ed., Hackett Publishing Co., Inc. 1994) (1668) (Hobbes wrote "Whatsoever therefore is consequent to a time of Warre In such condition there is no place for Industry And the life of man, solitary, poore, nasty, brutish, and short.").

related cultural shibboleth that the Department could survive only where a blue wall of silence prevailed.³⁰ A sad message any day, but worse yet in the days of community policing.³¹ When we add to this the Department's brooding omnipresence of insularity,³² second to none, a change in culture merits real attention.

In addition to required attendance at the academy, the Department permits no outside instructors, as if only police can teach police, no new ideas from the outside are countenanced.³³ While loyalty in a paramilitary operation like the Police Department, or for that matter, in most any organization is important, forthrightness about wrongdoing, even if it's your buddies' wrongdoing, must be instilled as a facet of the police officer's *modus operandi*.³⁴

To stand by, as reports showed,³⁵ while criminal acts are committed by fellow officers can only increase corrupt activity. Training must be broadened; a curriculum with experts from many fields must participate in a teaching experience that will foster loyalty in times of danger, but will at the same time advocate enhanced ethical behavior.³⁶

Another area of the Department's culture that deserves attention is diversity.³⁷ Captains and above, to say nothing of police officers and Police Benevolent Association³⁸ leaders, must all be urged to participate in a sophisticated training program. This need is heightened by various

30. See MOLLEN COMM'N REP., *supra* note 3, at 53-58 (discussing code of silence as an entrenched loyalty ethic that deters officers from reporting misconduct and thus fuels corruption).

31. See generally Sam Roberts, *As Police Force Adds to Ranks, Some Promises Still Unfulfilled*, N.Y. TIMES, Aug. 7, 1994, § 1, at 35 (discussing Mayor David Dinkins's "Safe Street, Safe City" promise in 1990 which would include a return to community policing where officers would be deployed on neighborhood patrols).

32. See MOLLEN COMM'N REP., *supra* note 3, at 80.

33. See *id.* at 59 (discussing police officers' belief that their safety depends solely on their fellow officers).

34. *Id.* at 58.

35. See *id.* at 51-58 (describing how fellow officers turn a blind eye to corrupt activities as a result of the code of silence).

36. *Id.* at 60-63.

37. See *id.* at 66 (stating that the Department should take into account the new demographics of the police force).

38. See *id.* at 66-68 (stating that the union representing police officers, the Police Benevolent Association may have a role in perpetuating police corruption because in some instances they help reinforce the code of silence and advise witnesses not to cooperate).

problem situations revealed at our hearings.³⁹ For example, the hearings showed a high crime precinct in a minority neighborhood was staffed by marginally competent white police officers,⁴⁰ a precursor for trouble. To run a Department eighty percent white and twenty percent minority⁴¹ in a city that is quickly becoming the opposite,⁴² without a real effort at diversity training—at teaching understanding—is more than harmless error. This was known even back in the 1960s, under the leadership of the late Commissioner Vincent Broderick.⁴³ Back then, the Department established training programs that stressed both sensitivity to diversity and the notion of civil rights in the Department's relations with the general public.⁴⁴

While the Department's neglect in the area of diversity training will result in escalating brutality complaints, it may, without attention, spark even more explosive problems for our city. Yet the Department and its leadership remain so insular and so introspective that outside help regardless of where it may be offered, seems to be totally disregarded.⁴⁵

Let me read you—since I see that Commissioner Bratton is here—a portion of a letter I wrote to him, dated February 3, 1995.

Dear Bill, I wrote to you on September 30th about the Department's doing some diversity training. I was concerned then and am concerned even more now that no experts from outside the Department have been employed to do diversity training. This would enable your department to better approach diversity issues in the Department itself and in the community.

39. *See id.* at 91-101.

40. *See id.* at 61-62.

41. Catherine S. Manegold, *Rally Puts Police Under New Scrutiny*, N.Y. TIMES, Sept. 27, 1992, § 1, at 35 (stating that 22% of the Department consists of minorities).

42. U.S. BUREAU OF CENSUS, STATE AND METROPOLITAN AREA DATA BOOK, 1986, at 203 (1986) (Table A—Metropolitan Areas, Population Statistics); U.S. BUREAU OF CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1994, at 45 (114th ed. 1994) (Table 46—Cities With 100,000 or More Inhabitants in 1992) (listing New York City as having a 40.75% minority population in 1986 as compared with a 53.1% minority population in 1990, a 12.35% rise in the City's minority population during the six-year period).

43. New York City Police Commissioner, 1965-66.

44. *See* Selwyn Raab, *Rising Brutality Complaints Raise Questions About New York Police*, N.Y. TIMES, May 6, 1985, at A1 (noting sensitivity training of the 1960s).

45. *See generally* Clifford Krauss, *Police Report Recommends More Training and Oversight*, N.Y. TIMES, Oct. 18, 1994, at A1 (discussing a police task report that recommends internal department structural changes, but makes no mention of the independent monitor suggested by the Mollen Commission).

I know how busy you are and how much mail you receive, but I do hope that on this occasion, you will find the time to respond.⁴⁶

I never heard a word in response. I must say that while federal judges occasionally find themselves upsetting people they call and write, in my experience, they always get a response. This attitude, I'm sure, is just the product of the kind of time problems and obligations that the Department has, but that is the point: those obligations, it seems to me, require some refocusing.⁴⁷ Clearly corruption must be ferreted out and punished. It is equally clear that enduring change requires constant attention to create and maintain a different mind set in the Department. It is this aspect, this different emphasis of the Mollen Commission work, which may be the lasting legacy of that experience.

46. Letter from Harold Baer, Jr., United States District Judge, Southern District of New York, to William Bratton, New York City Police Commissioner (Feb. 3, 1995) (on file with the *New York Law School Law Review*).

47. Shortly after the Symposium, Commissioner Bratton informed Judge Baer that he would be appointing a commission to review so-called culture problems within the New York City Police Department, including problems relating to diversity training. See Letter from Harold Baer, Jr., United States District Court Judge, Southern District of New York, to *New York Law School Law Review* (Nov. 15, 1995) (on file with the *New York Law School Law Review*).

