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Peter F. Vallone

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SPEECH

THE CITY COUNCIL'S VIEW OF INDEPENDENT OVERSIGHT OF THE POLICE DEPARTMENT*

PETER F. VALLONE**

Let me just say that it is a great honor to see Police Commissioner William Bratton,¹ former Police Commissioner Pat Murphy,² and Nick Scoppetta³ of the Mayor's Commission.⁴ What we are doing in the City Council,⁵ and I have been around for twenty years, has nothing to do with the personality of the people currently in office. As a matter of fact, probably no one is more qualified than Mayor Giuliani, who has a long history in criminal enforcement,⁶ and Police Commissioner Bratton who is known and dedicated for improving policing.⁷

* Peter F. Vallone 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].

** Speaker of the New York City Council. Mr. Vallone wishes to thank Richard M. Weinberg, Chief Counsel to the City Council, for his assistance in drafting the legislation discussed herein and in preparing these remarks.

1. William J. Bratton, New York City Police Commissioner, appointed January 10, 1994 by Mayor Rudolph W. Giuliani.

2. Patrick V. Murphy, New York City Police Commissioner, 1970-1973.

3. Nicholas Scoppetta is the recently appointed chairman of Mayor Rudolph Giuliani's commission to combat police corruption. See *infra* notes 27-32 and accompanying text.

4. See *infra* notes 26-32 and accompanying text (discussing the Mayor's Executive Order establishing a police oversight commission).

5. The City Council is the legislative body of New York City, consisting of the Public Advocate and fifty-one other members termed council members. The Council has the power, *inter alia*, to adopt and enforce local laws, investigate and oversee the activities of city agencies, review city procurement policies and procedures, and advise and consent to selected mayoral appointments. N.Y. CITY CHARTER ch. 2, §§ 21-31 (1992).

6. See John Moody, *Safe? You Bet Your Life*, TIME, July 24, 1995, at 35 (describing Giuliani as "a hard-nosed former federal prosecutor who has long made a subspecialty of studying local law enforcement").

7. "In his career in police work, Mr. Bratton has risen to the top of four police forces: the Massachusetts Bay Transportation Authority police, the 640-member Metropolitan Police Department in Boston, the New York City Transit Police, and the Boston Police Department, with a force of just under 2000 officers." Alison Mitchell, *Giuliani Appoints Bostonian to Run New York's Police*, N.Y. TIMES, Dec. 3, 1993, at

As you know, we recently created the so-called Independent Police Investigation and Audit Board (hereinafter Board).⁸ Why? Nothing is more important to the people of New York than the safety of our city. If we do not have a safe city, we are not going to have a city.

Primary to the safety of our city is a strong, solid police department. Remember, we, the City Council, the representatives of the City, were the ones who proposed and advocated for the New York City Safe Streets, Safe City Program⁹ that put more than 6000 cops on our streets today.¹⁰ That is why our crime figures are going down.¹¹ We have now combined the multiplicity of cops with the expertise of Police Commissioner Bratton and the Mayor.

B4. "Mr. Bratton's admirers point to his innovations in community policing, his introduction of new technology and more training and his ability to get money from businesses for things like equipment and station renovations." Felicia R. Lee, *Man in the News; Policing and Image: William Joseph Bratton*, N.Y. TIMES, Dec. 3, 1993, at B4.

8. The Board is the independent mechanism resulting from legislation introduced by the New York City Council, upon the recommendations of the Mollen Commission. The Board is comprised of five members: two appointed by the mayor, two appointed by the City Council, and the chair member appointed jointly. Its purpose is to closely monitor the New York City Police Department's anti-corruption efforts as well as independently investigate allegations of illegal activities. *See* N.Y., N.Y., Local Law 13 (Jan. 19, 1995) (amending the New York City Charter to establish an independent police investigation and audit board).

After a vigorous battle between Mayor Giuliani and the City Council, the New York State Supreme Court, on June 28, 1995, invalidated Local Law 13 of 1995 as a violation of separation of powers. The court found that the law "vest[ed] the Board with powers which are essentially executive in nature so as to curtail the Mayor's executive prerogatives, especially as concerns his Charter-given appointment power," and absent a referendum as required by the City Charter, the Board was invalid. *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).

9. On February 13, 1991, New York State enacted legislation creating a Safe Streets, Safe City Advisory Board, amending state tax law to allow for a state lottery for the support of educational programs to reduce crime and enhance crime prevention in New York City, and amending City tax law to raise revenue for criminal justice services by imposing a personal income tax surcharge on New York City residents. *See* 1991 N.Y. LAWS ch. 6 (McKinney 1991).

10. Steven L. Myers, *Mayor Says Crime Data Affirm Strategies*, N.Y. TIMES, Jan. 8, 1995, § 1, at 26 (reporting that the Safe Streets, Safe Cities Program "raised taxes specifically to pay for the hiring of 6000 more police officers").

11. On average, New York City experienced a twelve percent decline in the seven major felonies in 1994. *See* N.Y. CITY POLICE DEP'T OFF. OF MGMT. ANALYSIS AND PLANNING, STATISTICAL REP.: COMPLAINTS AND ARRESTS 1994, at 7 (1995).

We are proud of our cops. The vast majority are good, honest cops.¹² As Commissioner Bratton said only a few moments ago, it's only a few of them that let us down. But we have to give those good, honest cops a place to turn to report corruption without fear of retribution. And so the Board was formed by the Council.

When I, along with Public Safety Committee chair Sheldon Leffler¹³ and Governmental Operations Committee chair Mary Pinkett,¹⁴ first introduced the legislation to create this Board, we did so because we believed that it was time for an independent agency to do for the Police Department what it so far had been unable to do for itself: root out criminals within the Department, and root them out from the bottom up.¹⁵

The present system does not work. It simply does not work. The need for the Council's legislation was made clear by the findings of the Mollen Commission.¹⁶ That commission headed, as you know, by Judge Milton Mollen, who I think was here today to speak, was set up after Michael Dowd and five other police officers were arrested on drug

12. 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. 1 (July 7, 1994) (Milton Mollen, Chair) [hereinafter MOLLEN COMM'N REP.] (reporting that "the vast majority of New York City police officers are honest and hard-working, and serve th[e] City with skill and dedication each day.").

The Mollen Commission, commonly referred to as such after its chairman, Judge Milton Mollen, was created in July, 1992 by Executive Order of then-Mayor David Dinkins. The Commission was asked to examine three areas of deep public concern: (1) the extent and nature of corruption within the New York City Police Department; (2) the Department's policies and procedures for corruption control; and (3) improvements and reform for the detection and prevention of corruption within the Department. Harold Baer, Jr. & Joseph P. Armao, *The Mollen Commission Report: An Overview*, 40 N.Y.L. SCH. L. REV. 73, 74 (1995).

13. Sheldon S. Leffler, N.Y. City Council, Public Safety Committee.

14. Mary Pinkett, N.Y. City Council, Governmental Operations Committee.

15. Illustrating the Department's problems controlling corruption, the Mollen Commission investigation found

a [corruption control] system that had virtually collapsed years ago—and that was more likely to minimize or conceal corruption than uncover and uproot it. [The Commission] found that the New York City Police Department had largely abandoned its responsibility to police itself and had failed to create a culture dedicated to rooting out corruption.

MOLLEN COMM'N REP., *supra* note 12, at 70.

16. See MOLLEN COMM'N REP., *supra* note 12, at 1.

trafficking charges.¹⁷ As many as thirty cops in just one precinct allegedly were engaged in criminal activity.¹⁸ And after an exhaustive two-year process, including hearings and testimony, that commission recommended that an independent police investigation board be created.¹⁹

We need to give good cops a vehicle to report corruption without fear of retribution. Only an independent agency can accomplish this. Only an independent board can work to keep what seemed to be inevitable cycles of police corruption from being so inevitable. We need to give the police the tools they need to expose any corruption they find and help maintain the integrity of the Department.

This legislation authorizes the Board to (1) perform assessments and audits of the Police Department's internal systems for detecting, investigating and preventing corruption and make recommendations for the improvement of those systems; (2) assist the Police Department in its formulation and implementation of policies and programs to detect and eliminate corruption; (3) undertake independent investigations of possible corruption within the Police Department; and (4) undertake investigations of possible corruption within the Police Department at the request of the Mayor or the Police Commissioner.²⁰ The Board that the City Council has legislated will have the power to investigate police corruption and monitor Department activities to detect and prevent corruption.²¹ It will

17. Michael Dowd was the subject of more than 15 corruption allegations within the New York City Police Department (NYPD) over a six-year period, yet not a single complaint was ever substantiated despite abundant evidence of Dowd's criminal activities. Dowd's case caused widespread concern about the extent and nature of police corruption and the NYPD's competence and commitment to combat it. Baer & Armao, *supra* note 12, at 74-75. On May 6, 1992, after six years as an open and notorious drug dealer and racketeer in uniform, detectives from Suffolk County, New York finally arrested Dowd, Kenneth Eurell, and four other police officers. See MOLLEN COMM'N REP., *supra* note 12, Exh. 8 at 20.

18. The Mollen Commission's corruption investigations led to criminal charges against 14 police officers in Manhattan's 30th Precinct. Baer & Armao, *supra* note 12, at 75. After the Commission's tenure expired, the United States Attorney and the Manhattan District Attorney charged additional police officers of the 30th Precinct, bringing the total number of defendants in that precinct to over 30. See George James, *Officer Resigns Over False Testimony, but Says his Supervisors Made him Lie*, N.Y. TIMES, Nov. 1, 1995, at B3.

19. MOLLEN COMM'N REP., *supra* note 12, at 149.

20. N.Y., N.Y., Local Law 13, § 2 (Jan. 19, 1995) (amending N.Y. CITY CHARTER ch. 18-B, § 451(a)(1)-(4)).

21. See *supra* note 8 and *infra* notes 22-23 and accompanying text.

have subpoena power²² and that is vital. For it to be effective, the Board must have teeth and the subpoena power gives it these teeth.

The Board will be made up of five members, two appointed by the Council, two appointed by the Mayor and one appointed jointly.²³ This appointment allocation ensures that the Board will be independent. This Board will address itself strictly to corruption within the Police Department.²⁴ An independent Board will finally give police officers a separate place to go to report police criminality, criminality that we have learned from experience can be protected by the so-called blue wall of silence.²⁵ The Board will turn that blue wall of silence into a blue wall of integrity.

Unfortunately, the Mayor disagreed and chose to ignore the law and replaced the independent panel with a panel that is not independent but is under his control.²⁶ By doing this, he risks giving the impression that he is above the law. Although the Mayor apparently believes his action is necessary to maintain his executive powers,²⁷ and I am convinced that that is what he believes, it sends not one, but two wrong messages.

First, the Mayor's action sends a chilling message to all citizens who expect elected officials not only to uphold the laws but to obey them as well. Second, he is depriving the public and the Police Department of an important tool, a real confidence builder within the system for rank and

22. N.Y., N.Y., Local Law 13, § 2 (Jan. 19, 1995) (amending N.Y. CITY CHARTER ch. 18-B, § 452).

23. *Id.* § 2 (amending N.Y. CITY CHARTER ch. 18-B, § 450).

24. *See supra* note 8.

25. *See* MOLLEN COMM'N REP., *supra* note 12, at 51 (describing the blue wall of silence as "the unwritten rule that an officer never incriminates a fellow officer"). The Mollen Report adds that "[t]he pervasiveness of th[is] code of silence is bolstered by the grave consequences for violating it: Officers who report misconduct are ostracized and harassed; become targets of complaints and even physical threats; and are made to fear that they will be left alone on the streets in a time of crisis." *Id.* at 53.

26. *See* N.Y., N.Y., Exec. Order 18 (Feb. 27, 1995) (establishing a "Police Commission" consisting of five members appointed, and removable for cause by the Mayor). The Commission may not investigate matters without the approval of the Mayor and must report all activities to the Mayor. *Id.* Further, the Mayor's commission may not issue subpoenas but must request that the Department of Investigation issue a subpoena. *Id.*

27. *See* Mayor of New York v. Council of New York, No. 402354, 1995 WL 478872 (N.Y. Sup. Ct. June 20, 1995) (noting that "[t]he Mayor . . . vehemently opposed the creation of a Board, as provided for in Local Law 13, on the ground that the enactment curtails and transfers his executive powers and powers of appointment, and the powers of his appointees, in violation of the doctrine of the separation of powers, and without benefit of public referendum . . ."), *appeal docketed*, No. 95-3710 (1st Dep't N.Y. App. Div. Nov. 16, 1995).

file cops and the communities they serve. The commission that the Mayor has created is as far from the Mollen Commission model as one can get.²⁸ It is not an independent investigatory body, but one under the Mayor's control.

Its primary purpose will be to audit Police Department anti-corruption reports.²⁹ While this is undoubtedly an important function, one that will be carried out by the Board under the Council's law as well, it is not enough. Significantly, no investigation could begin without the express consent of the Mayor,³⁰ nor could any subpoena be issued in furtherance of an investigation unless it was issued by the commissioner of the Department of Investigation.³¹

It is important to understand that under the Council's law, primary responsibility for the investigation of police corruption will still fall within the Police Department,³² and that the Mayor's power to manage the Police Department will in no way be diminished. But I repeat, the Board must have teeth, and to have teeth, it must have its own investigation and subpoena power. Only a legislature can do that. No chief executive can do it.

To avoid prejudice to ongoing investigations by other law enforcement agencies, the Board will have to coordinate with the New York Police Department Internal Affairs Division and with other investigative bodies,³³ including the City's five District Attorneys as well as the Civilian Complaint Review Board.³⁴ We actually mandated in the

28. See Baer & Armao, *supra* note 12, at 85 (explaining that "[the Commission] concluded that an independent board with a small staff, and without a prosecutorial role, would [be] best suit[ed] to the task]" and that

primary responsibility was to remain with the [Police] Department . . . [Additionally,] the prosecutorial role [was to] remain with the District Attorneys and the U.S. Attorneys. . . . [T]he Commission desired and sought an executive order setting up a Board or Commission that would provide investigative and auditing oversight. The Commission felt subpoena power and investigative power were essential [However,] the Mayor has by executive order appointed a group of creative and bright men and women to a more limited commission with virtually no independence and instead dependent, in large measure, on the decisions of his Commissioner of Investigation.).

29. See N.Y., N.Y., Exec. Order 18, § 2(a) (Feb. 27, 1995).

30. *Id.* § 3(b).

31. *Id.* § 3(d).

32. N.Y., N.Y., Local Law 13, § 2 (Jan. 19, 1995) (amending N.Y. CITY CHARTER ch. 18-B, § 456).

33. *Id.* § 2 (amending N.Y. CITY CHARTER ch. 18-B, § 457).

34. *Id.*

Council's law, to make sure that they do not start tripping over one another in investigations, that the Board enter into a protocol with each investigative body, so there would be no misunderstanding of our clear intent.³⁵

In the event that the Board determines that there are reasonable grounds to believe that a criminal violation has occurred or is occurring, the Board is obligated to immediately turn this information over to the appropriate prosecutorial office and to the police commissioner.³⁶ The Council's law establishing this Board will take effect in July of 1995.³⁷ We will have named our appointees by then; we hope that the Mayor will do likewise. This permanent independent board will finally provide a forum for preventing systematic corruption within the Police Department. This is for the good of the police themselves and it is for the good of all of the people of the City of New York.

I have been around for two decades. I have seen one great police commissioner come after another. Nobody questions their ability; nobody questions their integrity; and nobody questions their desire to root out corruption.

The Mayor, however, has many other things to do. At the present, he and I are meeting concerning a three billion dollar budget gap, while at the same time facing many more billions of dollars of our own New York City tax dollars that the federal and state governments are taking away from us.

The Mayor cannot, because of other pressing responsibilities, focus primarily on the issue of police corruption during this morning's symposium. I cannot imagine a mayor more qualified than Mayor Giuliani in this particular area,³⁸ but he has other pressing duties to which he must attend.

The five District Attorneys all come to me claiming that if they had another \$20 million or \$30 million, they could do the job of rooting out corruption in the Police Department. And I say to them all—and I know them all and they are all terrific—even if we had five billion dollars to combat police corruption, the five borough District Attorneys have other matters to which they must attend, and they cannot focus primarily on police corruption.

In the Executive Order that the Mayor published, the Police Department remains responsible for conducting investigations of specific

35. *Id.*

36. *Id.*

37. *See id.* § 3 (announcing Local Law 13's effective date of 180 days after its enactment on January 19, 1995 as required by the New York City Charter).

38. *See supra* note 6.

allegations of corruption made against the Police Department.³⁹ The Council's law says the same thing.⁴⁰ The Mayor's Executive Order allows an investigation only where the Commission, the Commissioner of the City Department of Investigation, and the Mayor, determine that exceptional circumstances warrant such an investigation.⁴¹ In addition, the Mayor's Executive Order states:

Any hearings or investigations undertaken by the Commission may include the issuance of subpoenas by the Department of Investigation in accordance with the Department of Investigation's powers under Chapter 34 of the New York City Charter to the extent that the Commission and the Department of Investigation jointly determine is appropriate.⁴²

That is not independence as envisioned by the Mollen Commission.

Right now we have some very capable and qualified people in City government who are dedicated and who want to help, and most certainly will do some very good things over the next month, six months, or two years. The problem is that lawyers and officials change jobs and leave office; a law lasts. It survives the personality of the people involved. It survives the present administration. It goes on until the legislative body changes it.

We have been working on the legislation that implements the Board for two years. We had innumerable hearings and anyone who had anything to say about it testified.⁴³ I changed the language of the bill five times to make sure that the Mayor's concerns were addressed; that he still was responsible, that the police commissioner is still responsible, and that nobody is taking that responsibility away from them.

One of the best tactics of prosecuting criminal cases is to grant immunity to wrongdoers. The theory is that a wrongdoer who has been

39. N. Y., N.Y., Exec. Order 18, § 3 (Feb. 27, 1995).

40. See N.Y., N.Y., Local Law 13, § 2 (Jan. 19, 1995) (amending N.Y. CITY CHARTER ch. 18-B, § 456).

41. N. Y., N.Y., Exec. Order 18, § 3(b) (Feb. 27, 1995).

42. *Id.* § 3(d).

43. 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) (noting that the proposed legislation for Local Law 13 was subject to extensive public debate before the City Council adopted it as law on November 23, 1994). Additionally, the Mayor held a further public hearing on December 12, 1994, before he vetoed the proposal on December 23, 1994. The Council reconsidered and then repassed the proposal on January 19, 1995, which then became Local Law 13 of 1995, adopted over the Mayor's objections. *Id.*

granted immunity will implicate other wrongdoers. The Commission cannot grant immunity. Since only a District Attorney or a U.S. Attorney can grant immunity, there must be cooperation.⁴⁴

Anyhow, I think it is a great law. It is going into effect on July 1st. It is the law and it will remain the law unless it is challenged and changed in a court of competent jurisdiction.⁴⁵ And that does not mean it cannot be changed, and I have said this over and over again, if something about this bill, like any other law that we pass, does not work or could be made better, we will change it, we will open it up again.

The legislative process works by consensus.⁴⁶ That means fifty-one different Council members, all of whom represent 150,000 different people have to come together, examine it, debate it and come to a consensus. A decision about how to best root out corruption does not depend on one person. It depends on an arduous process of public debate and hearings before legislation has been enacted. We have been through that and the law implementing the Independent Board reflects this broad consensus.

44. See N.Y., N.Y., Local Law 13, § 1 (Jan. 19, 1995) (citing the Council's awareness that other offices such as the City's District Attorneys play a vital role in exposing and prosecuting acts of corruption).

45. See *supra* note 8.

46. See N.Y. CITY CHARTER ch. 2, § 34 (1992) (explaining the process by which local laws and resolutions are passed).

