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Hon. Harold Baer Jr.

Joseph P. Armao

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THE MOLLEN COMMISSION REPORT: AN OVERVIEW

HON. HAROLD BAER, JR.* & JOSEPH P. ARMAO**

I. HISTORY OF THE COMMISSION

For the past hundred years, New York City has experienced a twenty-year cycle of corruption, scandal, reform, backslide, and fresh scandal in the New York City Police Department. The Lexow Committee of 1894,¹ the Curran Committee of 1913,² the Seabury Committee of 1930,³ the Harry Gross investigation of 1950,⁴ and the Knapp Commission of 1971⁵ have each served as critical signposts of a regular and repetitive cycle of police corruption within the New York City Police Department (NYPD). The creation of the Mollen Commission,⁶ the most recent independent inquiry into police corruption, marks only the latest chapter in this historical pattern.

In May, 1992, six police officers assigned to two separate Brooklyn precincts were arrested on charges of participating in a conspiracy to sell

* Harold Baer, Jr. is a United States District Court Judge for the Southern District of New York. Judge Baer was a member of the Mollen Commission.

** Joseph P. Armao is a partner at Squadron, Ellenoff, Plesent, & Sheinfeld. Mr. Armao was Chief Counsel to the Mollen Commission.

1. SENATE COMM. TO INVESTIGATE THE POLICE DEP'T OF THE CITY OF N.Y. (Jan. 18, 1895) (Senator Clarence Lexow, Chair) [hereinafter LEXOW COMM. REP.].

2. 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, Chair).

3. 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. (March 28, 1932) (Samuel Seabury, Referee).

4. In 1950, 21 police officers were indicted for accepting regular payoffs from gambler Harry Gross. See William Murphy & Leonard Levitt, *It's Blue Deja Vu: New Scandal Reads Like Old Police Stories*, N.Y. NEWSDAY, June 21, 1994, at 7 (discussing the similarities and differences between corruption scandals revealed by the various commissions from 1894 to the present).

5. N.Y. CITY 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.].

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

narcotics in Suffolk County.⁷ The arrests were made by Suffolk County Police, not by the NYPD Internal Affairs Unit.⁸ Shortly thereafter, the press disclosed that one of the officers, Michael Dowd, had been the subject of more than fifteen corruption allegations within the NYPD over a six-year period,⁹ however not a single complaint had ever been 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.

In July, 1992, almost exactly twenty years after the Knapp Commission published its final report, Mayor David N. Dinkins established by executive order a temporary mayoral commission to investigate issues of police corruption. Commonly referred to as the Mollen Commission after its Chairman, Judge Milton Mollen, the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department was asked to examine three areas of deep public concern: (1) the extent and nature of corruption within the NYPD; (2) the NYPD's policies and procedures for corruption control; and (3) improvements and reform for the detection and prevention of corruption within the NYPD.¹⁰

The Mayor's executive order empowered the Commission to subpoena witnesses and documents, to take testimony under oath, to conduct private and public hearings, and under limited circumstances, to grant immunity from criminal prosecution.¹¹

After assembling a small staff of attorneys, investigators and analysts, and armed with the powers provided by the executive order, the Commission embarked on a wide-ranging investigation to determine whether the corruption of Michael Dowd and the NYPD's failure to apprehend him were a unique happenstance or reflected deeper problems within the Department. The Commission centered its attention on the nature and extent of police corruption, on the NYPD's ability and will to control corruption, and on the police values and culture that might allow such corruption to exist. The Commission staff reviewed thousands of NYPD policy documents, personnel files and corruption case files; conducted hundreds of private hearings and interviews with private

7. See Craig Wolff, *Lawyer Says Ex-Officer Ready to Admit Charges*, N.Y. TIMES, June 10, 1993, at B3.

8. *Id.*

9. *Id.*

10. N.Y., N.Y., Exec. Order 42 (July 24, 1992) (establishing the Mollen Commission, in which the five members of the Commission were appointed by then-Mayor David N. Dinkins).

11. *Id.* § 3.

citizens and former and current police officers, including some officers who had previously been convicted of corruption charges; audited and conducted performance tests of the principal components of the NYPD's anti-corruption units, recruitment process, and training program; and initiated a number of field investigations of police officers, police precincts and specialized police units where analysis had indicated that police corruption existed.¹² The Commission's field investigations met with much success. In conjunction with the United States Attorney and the Manhattan District Attorney, the Commission's corruption investigations led to criminal charges against seven police officers in Brooklyn's 73rd Precinct and fourteen police officers in Manhattan's 30th Precinct.¹³ Commission investigators also uncovered evidence of substantial corruption in a number of other precincts in Manhattan, Brooklyn and the Bronx. During the course of its two-year investigation, the Commission developed extensive evidence concerning the nature and extent of police corruption, the NYPD's capacity to eliminate it, and the Department's institutional values and culture that permitted it to exist. The Commission held public hearings in September, 1993,¹⁴ in which corrupt police officers, honest police officers, NYPD corruption investigators, high-ranking NYPD officials and other knowledgeable parties testified about the state of police corruption, its causes, the NYPD's reluctance to address the problem and possible solutions to break the twenty-year cycle of scandal and subsequent short-lived reform that has afflicted the NYPD over the last century.

On July 7, 1994, the Commission issued a final report stating its conclusions on corruption and corruption control. The Commission divided its Report into four principal areas of discussion and analysis: the state of police corruption, the quality of the NYPD's integrity controls, the problem of police values and culture that fuel and protect corruption, and recommendations for internal and external reform to remedy the problem.¹⁵ More than prior inquiries into police corruption, the Commission sought not only to correct corruption once it surfaced, but sought also to attack corruption's root causes to prevent it from happening yet again.

12. See MOLLEN COMM'N REP., *supra* note 6, at 11-12.

13. *Id.* at 11.

14. *Id.* at 8.

15. *Id.*

II. THE STATE OF POLICE CORRUPTION

The Commission found that the large majority of New York City police officers are honest and want to see corrupt officers removed from their ranks. Nonetheless, the Commission found that the corruption of Michael Dowd was not isolated nor aberrational, but represented a serious and alarming form of police wrongdoing that exists, in varying degrees, in patrol precincts throughout the City.¹⁶ Today, police corruption predominantly involves the narcotics trade. Gambling, prostitution and other vice rackets are no longer the springboard to a career of corruption in the Police Department as they were in times gone by. The longstanding unwritten rule—accepted by most in the Police Department before, up to, and including the Knapp Commission's era—that narcotics graft is "dirty money" has completely disappeared. Today, with the rule diluted, the cocaine and crack trade provides corrupt officers with abundant opportunity to steal money, drugs and guns from drug dealers and to assist drug traffickers who pay handsomely for non-enforcement of the law.

The Commission found evidence of police officers profiting from the drug trade in a variety of ways, including: (1) selling confidential police information, escorting the transportation of drugs and drug money and using police powers to harass rival drug dealers;¹⁷ (2) stealing drugs, money and handguns from street dealers;¹⁸ (3) robbing drug dealers and their customers;¹⁹ (4) burglarizing drug dens and stash houses;²⁰ and (5) selling stolen drugs and guns to other officers or to drug dealers.²¹ Modern corruption is not about "accommodation," where police officers sell immunity from arrest or conviction. The distinction between the criminal and the corrupt cop has disappeared. Corrupt cops no longer merely use their authority to exact payoffs; they now actively engage in criminal activity. Corruption assumes the nature of its provenance. Paralleling the violent world of narcotics trafficking, police corruption has become aggressive, extortionate and an often violent abuse of authority by officers who actively seek out opportunities to profit from the criminals they are sworn to arrest.

The Commission found that police perjury and brutality were frequently linked to narcotics corruption. Officers engaged in drug crimes must often commit perjury and falsify official police records to conceal

16. *Id.* at 10-11.

17. *Id.* at 33.

18. *Id.* at 10.

19. *Id.*

20. *Id.*

21. *Id.*

their corrupt acts. When officers unlawfully searched premises, stopped vehicles or seized individuals to steal drugs, guns and money, they had to falsify police records and even perjure themselves before grand juries and the courts to justify their actions.²²

Traditionally, police corruption and police brutality were treated as two distinct manifestations of police wrongdoing. Corruption is about money; brutality is about the violent abuse of authority. Thus, while Internal Affairs investigates corruption, the Civilian Complaint Review Board (CCRB) investigates brutality.²³ One of the Mollen Commission's principal findings demonstrates that in contemporary policing, corruption and brutality were often linked.²⁴ The Commission found that brutality was, at times, an introduction and, at others, a companion to narcotics corruption.²⁵ This is not to say that brutality was a stranger to corruption in the days of the Lexow Committee,²⁶ but rather that the high stakes that characterize the contemporary narcotics trade seem to breed greater violence and brutality. Police officers told the Commission during private interviews and public hearings that they were initiated into the world of corruption by committing acts of brutality.²⁷ Acts of violence against suspects and prisoners were used as a barometer to prove an officer was a tough cop who could be trusted and accepted by fellow officers. In other instances, the Commission observed, acts of violence were carried out to assist and promote other corrupt acts. In the most glaring examples, one 30th Precinct officer shot a drug dealer with his service revolver while attempting to steal a package of cocaine;²⁸ another officer, assigned to a Bronx precinct, testified to random beatings in and around suspected drug locations as a show of police power.²⁹

22. *Id.* at 36.

23. *Id.* at 45 (noting that, until recently, investigations of police corruption and brutality have been dealt with separately).

24. *Id.* (noting, for example, that police officers did not simply become corrupt; they sometimes became corrupt and violent).

25. *Id.* (noting, for example, that one officer not only robbed a drug courier, but also shot him in the stomach and another officer shoved a gun into a drug dealer's mouth and demanded information about when and where money would be collected so the officer could steal it).

26. LEXOW COMM. REP., *supra* note 1 (noting many members of the police force abused the resources of physical power to make arrests and to satisfy their personal brutal instincts).

27. *See* MOLLEN COMM'N REP., *supra* note 6, at 47 (stating that some officers testified that brutality served as a rite of passage to other forms of corruption and misconduct).

28. *See id.* at 45.

29. *See id.* at 48.

After the arrest of Michael Dowd and before the beginning of the Mollen Commission's tenure, NYPD officials contended that police corruption was a matter of individual officers seizing sporadic opportunities to make a quick score.³⁰ The Commission, however, found that today's corruption rarely involved a single police officer secretly taking advantage of an isolated opportunity. While nothing like the standardized and hierarchical system that characterized the gambling pad of yesteryear exists today, contemporary corruption typically involves groups of police officers—called "crews"—who actively seek out opportunities to score from drug dealers through protection rackets, larceny, extortion, burglary and robbery.³¹ Crews act with varying degrees of organization and coordination to identify targets, determine roles in carrying out the corrupt act and divide profits. As the Mollen Commission's Report described them: "crews are akin to street gangs: small, loyal, flexible, fast moving, and often hard hitting."³²

The Commission's investigation into the 73rd Precinct in Brooklyn, for example, revealed a crew of eight to ten patrol officers who, for two years, regularly broke into drug dens to steal money, drugs and guns.³³ They used code names over the NYPD radio to plan and coordinate their illegal raids; they assigned themselves roles to perform in assaulting their targets; they used NYPD equipment to gain entry to fortified locations; and they then, in or around the stationhouse or at secret off-duty locations, divided stolen money and other contraband.

The magnitude of today's corruption threatens social order in many communities. Corruption flourishes in the streets and residences of high-crime, drug-infested neighborhoods that are most often populated by the poor and powerless, minorities and undocumented immigrants, as officers take advantage of the opportunity to profit from these groups.

Throughout its Report, the Commission emphasized that police corruption did not exist in a vacuum. While making clear that corrupt officers were ultimately responsible for their actions, the Commission Report pointed out that police corruption was a multi-dimensional problem that was often fueled by police culture and the NYPD's own institutional behavior. Over the last century, recommendations born of previous investigations have dealt primarily with how the Department might be restructured and how additional layers of investigative and prosecutorial effort, both from within and without the Department, might reduce corruption. It is the Mollen Commission's fundamental premise that a

30. *See id.* at 10.

31. *Id.* at 17-18.

32. *Id.* at 18.

33. *Id.* at 17.

more robust remedy to the problem of effective corruption control must include attacking corruption's causes and not merely its symptoms.

III. POLICE CORRUPTION: THE EFFECT OF POLICE CULTURE

Greed will always be the principal cause of police corruption. But a belief that police corruption is exclusively about illicit profits and can be solved by a more vigilant Internal Affairs Bureau fails fully to reflect the complexity of the problem. The Commission observed a variety of other influences and attitudes that push police officers to abandon their integrity, including: the desire, especially among the more youthful, to experience power and thrills; a divisive hostility between the police and much of the public that creates an "Us against Them" mentality; adherence to a "code of silence" that keeps even honest cops silent about the misdeeds of their colleagues; and a belief that the Department—despite rhetoric to the contrary—cares much less about the integrity of the rank and file than about protecting the careers of its commanders.³⁴

The Commission found that corruption flourished in part because the NYPD's systems for stopping it were in a shambles. Not only did the Commission find that Internal Affairs had become feckless since the time of the Knapp Commission, but that the entire anti-corruption apparatus was more likely to minimize and conceal corruption than uncover it.³⁵ The Commission also found that no real effort had been made to attack the root cause of corruption.

In the Commission's view, the NYPD suffered from a department-wide reluctance to uncover corruption and thereby expose itself to the public discredit that such revelations inevitably produce.³⁶ As a result, avoiding scandal was more important than fighting corruption. The former chief of the NYPD's Internal Affairs testified at the Commission's public hearings that his superiors wanted to avoid bad publicity even at the cost of corruption control.³⁷ Institutional reluctance to uncover corruption contaminated the entire anti-corruption apparatus from recruitment, training, supervision and command accountability to investigations and intelligence gathering. This message was not lost on the cops on the beat. In their view, the police brass were so worried about a career free from

34. *See id.* at 21, 25, 56, 58, 64 (describing the influences and attitudes that compel police officers to commit corrupt acts).

35. *Id.* at 70.

36. *See id.* at 71.

37. *Id.* at 70 (referencing former Internal Affairs chief's testimony that "[a]ll parts of the department's corruption systems had been functioning terribly for years [and that] top commanders . . . didn't seem too concerned . . . because it guaranteed no bad headlines").

revelations of corruption, that insuring the integrity of their commands was often less important than protecting their careers. Some officers took this message to mean that they had free rein on the streets.

These factors became most evident in police precincts serving the City's poorest and most disadvantaged neighborhoods. The NYPD practiced an unwritten policy of populating such precincts, known as "dumping grounds," with incompetent and undisciplined officers, worsening what were already corruption-prone assignments.³⁸ The Commission found that it was in such precincts that the code of silence and the "Us against Them" mentality were strongest.³⁹ This is what happened in the 73rd Precinct when a crew of all white cops practiced their trade on the minority residents of that precinct.⁴⁰ It would be easy to say this was simply a black/white problem, but while that may be a facet, it is not the whole answer. For example, in the 30th Precinct, where the community is poor and minority, the bad cops were mostly minorities. With more time, the Commission might have sorted out these conundrums and reached some conclusions; without it, they have remained questions that deserve further study.

Perhaps the Commission's most cogent illustration of police corruption's evolution came through the testimony of Kevin Hembury, a former police officer assigned to Brooklyn's 73rd Precinct in Brownsville—one of the NYPD's better known dumping grounds. Hembury testified that he became a police officer because he wanted to help people. But within months he was helping himself to their money, drugs and guns.⁴¹ The reasons this transformation occurred were the most important messages of the Mollen Commission's work.

At the Police Academy, an officer testified, he had learned that cops were different from the society they police, that the police are "us" and the public is "them"—that a cop must be prepared to do anything for himself and his comrades to insure that "them" never get the better of "us." When Hembury reported for duty to the 73rd Precinct for the first time, he already knew the reputation of his assignment. Although a rookie cop, he knew the 73rd was basically a minority precinct and was considered a dumping ground. It was a place where the thousands of law-abiding, hard-working citizens that lived and worked in the neighborhood were lost among dope dealers, prostitutes, junkies, thieves and murderers. Unfortunately, many of the officers of the precinct

38. *Id.* at 61.

39. *Id.* at 58.

40. *See, e.g.*, Chapin Wright & T.J. Collins, *Protesters Ring Police Station*, N.Y. NEWSDAY, Sept. 14, 1989, at 7 (describing an incident where citizens in the 73rd Precinct witnessed white police officers brutalize black suspects during an arrest).

41. MOLLEN COMM'N REP., *supra* note 6, at 62.

practiced an abusive and corrupt method of policing that they justified as the only means to survive in a crime-ridden ghetto. Hembury, white, twenty-one years old and new to the Brooklyn ghetto, followed along and he, too, became abusive and corrupt.⁴²

Survival required forging close ties with his police partners. He had to assure them that he was a “good cop” who would keep his mouth shut about their wrongdoing and he relied on them to do the same for him. According to this officer’s testimony, protecting yourself and your fellow officers was a code that recruits learned and willingly accepted within the Police Academy.⁴³ On the dangerous streets of the 73rd Precinct, group loyalty might be a matter of life and death. Yet, it could also become a dependable cover for corruption.

After a year of patrolling the streets of the 73rd Precinct, Hembury, in fact, became known as a “good” cop among his fellow officers. His reputation earned him an invitation to participate in conducting “raids,” jargon for groups of police officers conducting warrantless searches of drug dealers, crack houses, drug dens and apartment buildings. At first, Hembury testified, he believed, or pretended to believe, that, although illegal, these raids had a law enforcement purpose: to display the power of the police, to frighten away drug dealers and to make arrests. But Hembury and his crew had crossed the line to corruption notwithstanding their self-concocted justifications. Within short order, no justification was necessary and raids became a regular means for the police to line their pockets with money and drugs stolen from the pockets and hiding places of drug dealers and drug dens.⁴⁴

How did this happen? Hembury’s corruption, like that of all the officers the Commission interviewed, was fundamentally the result of his own bad judgment. No one is to blame for an officer’s corruption more than himself. Certainly, even in the most severe circumstances, corruption is not inevitable, as legions of honest cops prove everyday. But the lesson the Commission report teaches about police corruption is that a variety of factors peculiar to police work contribute to corruption and must be taken into account in devising strategies to stop it.

Kevin Hembury, like all the other corrupt officers who gave evidence to the Commission, testified that the combined forces of greed, frustration and power made temptation of corruption all the more powerful.⁴⁵ The role of greed is obvious and, as when corruption appears in any profession, it explains much. But frustration and the lure of power

42. *Id.*

43. *See id.* at 55.

44. *Id.* at 25-26.

45. *See id.* at 62.

particularly exert their influences on police officers, especially those continually exposed to plentiful opportunities for corruption spawned in neighborhoods captured by crime and drugs.

Frustration arose from the sense that the Police Department had abandoned them to a dumping ground where there was small hope for career advancement and wide disbelief that police efforts could ever stem the tide of crime. In the face of such circumstances, Hembury and other officers decided to take things into their own hands. They used their powers as police officers to profit personally from problems they could never conquer. To demonstrate to the drug dealers that despite appearances that they were still in charge, they began to break down doors, and to threaten and beat suspects.⁴⁶ They thought of themselves as tax collectors rather than police officers and robbed criminals where they could not become their partners.

Secure behind the "blue wall of silence" and buoyed by sparse and ineffective supervision, raids in the 73rd Precinct grew more frequent and more sophisticated. Police officers participating in these raids used the Police Department radio to signal each other, using code names, and met in groups at clandestine locations leaving their sectors unpoliced.⁴⁷ The officers would assign each other tasks for the raid, such as covering the rear, or breaking down the door and eventually would split the loot in places like a stationhouse bathroom or a parking lot.⁴⁸

These raids continued for over three years, unchecked by precinct supervisors or Department corruption investigators. As this officer testified, he personally committed hundreds of acts of corruption, and yet neither he nor any of the other officers of his crew ever received a single disciplinary charge based upon these corrupt acts. The corruption became routine, an everyday part of the unquestioned conduct of a number of police officers assigned to the precinct. In a word, it became systemic.⁴⁹

Kevin Hembury and other corrupt cops who testified taught the Commission crucial lessons about police corruption as it exists today. First, corrupt officers are no longer simply condoning criminal activity like gambling or prostitution in exchange for regular, unlawful supplements to their salaries. Today, cops are engaged in the crime itself by trafficking in drugs, burglarizing premises they are sworn to protect and robbing individuals they are sworn to arrest. Second, brutality is a form of police corruption and not merely a form of police misfeasance. The two are linked and need to be investigated as part and parcel of an

46. *See id.* at 25.

47. *Id.* at 27.

48. *Id.* at 27-28.

49. *See id.* at 25-28.

identical problem. And perhaps, most important, police culture—the code of silence, the “us” against “them” mentality, the training and assignment procedures and the general cynicism about their own department—influences the state of police corruption and the ability to combat it successfully.

Brutality complaints are referred to or made directly to the CCRB. As a consequence, they are likely not to be thought of as corruption complaints or as part of a pattern. Now that the Mollen Commission has uncovered the close connection between brutality and corruption, perhaps the CCRB should look differently at the complaints they process. It may be that the person making the complaint is the one courageous citizen prepared to stand up and that a pattern of corrupt activity might be uncovered by a broader investigation. The CCRB is a valuable outlet for complaints against police and must be preserved. Some of us suggest, however, that in light of the Commission’s findings, a closer scrutiny of brutality complaints might lead to uncovering broader patterns of police misconduct.

IV. POLICE CORRUPTION: THE COMMISSION’S SOLUTION

In fashioning a remedy to corruption problems, the Commission kept the events of Hembury’s and other corrupt officers’ careers firmly in mind. Unlike past Commissions, where the recommendations focused on restructuring the department, beefing up investigations and redoubling prosecutions of corrupt officers, the Mollen Commission took a broader approach. The Commission firmly accepted the premise that the NYPD must remain accountable for keeping its own house in order.⁵⁰ But the Commission, at the same time, recognized that police management suffers from strong internal pressures to avoid uncovering corruption. The Commission contended that without a transformation of police culture, no set of corruption controls—no matter how well designed—would be successful. The Commission urged the NYPD to undertake a dual-track approach to improving police integrity. The first track focused on the NYPD’s internal operations; the second, on the creation of an outside monitor that would insure the vigilance and commitment of the NYPD’s own efforts to stop corruption now and in the future.⁵¹

The Commission viewed the control of corruption as requiring an effort beyond that provided by an office of internal affairs. The Final Report proposed over 100 recommendations for reform of recruitment, screening, training, supervision policies, command accountability, internal investigations and police culture and management. At the heart of the

50. *Id.* at 110.

51. *Id.*

recommendations was the Commission's challenge to the NYPD to attack the widespread tolerance for wrongdoing that affects even its otherwise honest members and to address negative aspects of police culture and policing policy that breed corruption and brutality.

There can be no substitution for Academy training. At the Academy, we found no course taught by an "outsider," i.e., a civilian. All courses were taught by members of the Department.⁵² The Academy had not updated its anti-corruption curriculum since an early 1970's training film. The kinds of problems encountered today as found by the Commission apparently played no part in the Department's program. Drawing on this record, it is hard to believe that the Department had given much attention to anti-corruption training.

Some members of the Commission believed that important and totally overlooked areas of study included the fact that there was no diversity training.⁵³ In a City such as ours, where the majority is black and Hispanic and the Police Department is 80% white,⁵⁴ such an omission is hard to countenance.

The Commission recommended the creation of a permanent outside monitor to identify and investigate corruption trends; to evaluate the performance of the NYPD's anti-corruption systems; and to help transform institutional policy and cultural conditions that nurture corruption.⁵⁵

The current debate between the Mayor and the City Council primarily reflects a difference of opinion as to the breadth of investigative powers that should be given to any new and independent entity.⁵⁶ The Commission carefully considered various oversight models. These models

52. *Id.* at 123. The Commission recommends the use of civilian faculty at the Police Academy to help minimize the in-bred group acculturation to corruption and to expose recruits to non-police points of view.

53. See Hon. Harold Baer, Jr., Speech: *The Mollen Commission and Beyond*, 40 N.Y.L. SCH. L. REV. 5 (1995).

54. See generally Catherine S. Manegold, *Rally Puts Police Under New Scrutiny*, N.Y. TIMES, Sept. 27, 1992, at 35 (estimating a minority population of 22% within the New York Police Department).

55. MOLLEN COMM'N REP., *supra* note 6, at 152.

56. See *Mayor of New York v. Council of New York*, No. 402354, 1995 WL 478872 (N.Y. Sup. Ct. June 30, 1995) (holding that Independent Commission created by the City Council was given "investigatory powers far beyond the needs of a merely advisory panel, inviting, as it does, investigation into individual acts of corruption, in direct competition with the law enforcement agencies possessed of the duty to conduct such investigations"), *appeal docketed*, No. 95-3710 (1st Dep't N.Y. App. Div. Nov. 16, 1995).

included an Inspector General, special prosecutor and others.⁵⁷ After much discussion with representatives around the State who are experienced in such matters, it concluded that an independent board with a small staff and without a prosecutorial role, would best suit current needs. The Commission was clear that primary responsibility was to remain with the Department. It was equally clear that the prosecutorial role should remain with the District Attorneys and the U.S. Attorneys. Nonetheless, the 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, and was equally anxious to study the culture problems so prominent among the recommendations. The Commission envisioned a small staff of a dozen or so investigators, accountants and academics. The Board or Commission would consist of five unpaid people with staggered terms. This is the intent of City Council Local Law No. 13 which passed over the Mayor's veto in January, 1995.⁵⁸ Without commenting on that veto, it deserves noting that the Mayor originally sought a special prosecutor with more investigative clout and at greater expense than the Council's version.⁵⁹ Now 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 decisions of his Commissioner of Investigation.⁶⁰

Twenty years ago, Detective Frank Serpico⁶¹ told the Knapp Commission: "We must create an atmosphere in which the dishonest officer fears the honest one, and not the other way around."⁶² The past twenty years have shown that the NYPD still finds it difficult to create that atmosphere. The Mollen Commission's recommendation to create an outside corruption monitor intended to supply the NYPD with the permanent help to do so.

57. See MOLLEN COMM'N REP., *supra* note 6, at 150-152.

58. See *Mayor of New York*, 1995 WL 478872 (invalidating the Commission established by the New York City Council because it infringed upon the Mayor's appointment powers and was not subjected to a public referendum).

59. See generally Thomas D. Thacher II, *How To Police The Police*, N.Y. TIMES, Aug. 1, 1994, at A15 (noting that Mayor Rudolph Giuliani has previously advocated the reinstatement of a special prosecutor).

60. See N.Y., N.Y., Exec. Order 18 (Feb. 27, 1995).

61. Frank Serpico is a former New York City police officer who exposed widespread police corruption in the New York Police Department in 1970 and prompted the creation of the Knapp Commission. See David Gates & Alexander Stille, *The Lonely Odyssey of an Honest Cop*, NEWSWEEK, Feb. 6, 1984, at 9.

62. MOLLEN COMM'N REP., *supra* note 6, at 51.

