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EDWARD V. SPARER PUBLIC INTEREST LAW FELLOWSHIP FORUM: Police Violence: Causes and Cures

Authors

Joan Wexler, Eve Cary, Paul G. Chevigny, Hon. Milton Mollen, William F. Kuntz II, and Deborah Small

**POLICE VIOLENCE: CAUSES AND CURES,
EDWARD V. SPARER PUBLIC INTEREST LAW
FELLOWSHIP FORUM, BROOKLYN LAW
SCHOOL, APRIL 15, 1998**

The following panel discussion, addressing the issue of police violence in New York City, includes the comments of several notable panelists who were kind enough to permit the *Journal of Law and Policy* to publish their remarks.

The Editorial Board and Staff of the *Journal* have supplemented the speakers' remarks with footnotes and commentary as a way of providing background material for the speakers' statements. These footnotes and commentaries by the *Journal* do not necessarily represent the opinions of the speakers. Similarly, the opinions of the noted speakers do not necessarily represent the opinion of the *Journal*.

Introduction

Dean Joan G. Wexler

Moderator

Professor Eve Cary

Panelists

Professor Paul G. Chevigny

Hon. Milton Mollen

William F. Kuntz II

Deborah Small

The topic of the Symposium this year is Police Violence: how wide spread is the problem, what are its causes and is there a cure. New York has had a police scandal every 20 years for the past 100 years. Investigative bodies were convened to study police corruption as far back as 1895 and then again in 1913, 1932 and 1955.¹ I am sure you will recall the Knapp Commission, named for its chair, Federal Judge Whitman Knapp, that was convened in 1972.² It was before this commission that Frank Serpico, who was later portrayed by Al Pacino, blew the whistle on corrupt cops.³

* Dean, Brooklyn Law School; J.D., Yale University; M.A.T., Harvard University; B.S., Cornell University.

¹ The earliest commission on police violence in New York City was the 1894 Lexow Commission, a special committee appointed to investigate the Police Department of the City of New York ("NYPD"). See 1 NEW YORK CITY POLICE CORRUPTION INVESTIGATION COMMISSIONS, 1894-1994 xliii-xlvi (Gabriel J. Chin ed., 1997) (providing an overview of the events that led to the appointment of the Lexow Committee, and of the issues of corruption it was created to investigate). The Lexow Commission was followed by similar police corruption investigations by the Curran Committee in 1913, the Seabury Investigation in 1932 and the Hefland Investigation in 1955. See 2 NEW YORK CITY POLICE CORRUPTION INVESTIGATION COMMISSIONS, 1894-1994 vii-x (Gabriel J. Chin ed., 1997) (detailing the origins, goals and results of the Curran investigations).

² The Commission to Investigate Allegations of Police Corruption and the City's Anti-Corruption Procedures, also known as the Knapp Commission, was formed to address widespread reports of corruption within the New York City Police Department. See 5 NEW YORK CITY POLICE CORRUPTION INVESTIGATION COMMISSIONS, 1894-1994 vii-x (Gabriel J. Chin ed., 1997) (providing an overview of the scandal which prompted the formation of the Knapp Commission and the results of its investigation).

³ New York City police officer Frank Serpico testified before the Knapp Commission regarding corruption within the Police Department. *Id.* at vii. Prior to his testimony, Serpico was branded as an outcast and whistle blower by fellow NYPD officers. Tony Allen-Mills, *Serpico Guns for New Breed of Bent Cop*, TIMES (London), Sept. 28, 1997, at 20 (providing a retrospective account of Serpico's service as a police officer, and his assistance in anti-corruption investigations into the NYPD). Serpico was portrayed by actor Al Pacino in a 1973 motion picture chronicling the officer's life and involvement in anti-

The most recent investigation of police corruption has been carried out by the Mollen Commission,⁴ established in 1992 under the chairmanship of the Honorable Milton Mollen, who we are honored to have today as one of our speakers. In addition, last summer, Mayor Giuliani set up a task force⁵ in the wake of the Abner Louima incident⁶ and similar allegations of police misconduct. Both the Mollen Commission and the Mayor's Task Force came to the conclusion that while the majority of police officers are honest and hardworking, there is a serious problem of police corruption and the closely associated problem of police violence.

corruption investigations. SERPICO (Paramount Pictures 1973).

⁴ See 6 NEW YORK CITY POLICE CORRUPTION INVESTIGATION COMMISSIONS, 1894-1994 vii-xi (Gabriel J. Chin ed., 1997) (summarizing the creation and findings of the Mollen Commission).

⁵ On August 19, 1997, New York City Mayor Rudolph Giuliani introduced his Police/Community Relations Task Force to investigate reported incidents of police abuse in the NYPD's 70th Precinct. Ellis Henican, *A Big Task Ahead For This Particular Force*, NEWSDAY (New York), Aug. 20, 1997, at A5.

⁶ In August 1997, Haitian immigrant Abner Louima levied allegations of physical and sexual abuse by several members of the NYPD following his arrest. Dan Barry, *Charges of Brutality: The Overview; Officer Charged in Man's Torture at Station House*, N.Y. TIMES, Aug. 14, 1997, at A1. On August 9, 1997, Louima was arrested by NYPD officers following a scuffle outside a nightclub in Brooklyn. *Id.* Louima alleges that, following his arrest, police officers from the NYPD's 70th precinct attacked him in the station house. *Id.* Among Louima's most publicized accusations was that the accused officers had sodomized him with the wooden handle of a toilet plunger. See David Kocieniewski, *Injured Man Says Brooklyn Officers Tortured Him in Custody*, N.Y. TIMES, Aug. 13, 1997, at B1 (describing Abner Louima's allegations of police brutality while he was in the custody of officers at the 70th Precinct). Louima's accusations sparked a firestorm of controversy regarding the behavior of New York City police officers. See John Kifner, *Thousands Call on City Hall To Confront Police Brutality*, N.Y. TIMES, Aug. 30, 1997, at 3 (chronicling the "Day of Outrage" march on August 29, 1997, across the Brooklyn Bridge to City Hall by over 7,000 citizens in response to the Louima accusations). The Louima case also served as the catalyst for the creation of Mayor Giuliani's Task Force on Police/Community Relations. Alan Finder, *At The Heart of Report on Police, Some Modest Proposals*, N.Y. TIMES, Mar. 28, 1998, at B2. Five New York City police officers have been charged by the U.S. Attorney's Office for the Eastern District of New York for their roles in the alleged assault on Louima. Henri E. Cauvin, *Rally for Louima*, DAILY NEWS (New York), Aug. 10, 1998, at 18.

We are fortunate today to have a panel of speakers, each of whom has spent a number of years studying these issues and has come to various conclusions about the causes of police violence and the cures for it. I look forward to their presentations and to the stimulating discussion among us that I hope will follow. I'd now like to introduce Professor Eve Cary who will moderate this afternoon's program. Professor Cary teaches legal writing, criminal law and appellate advocacy here at Brooklyn Law School. She has fought the problem of police violence from various perspectives, having been a special Assistant District Attorney in the Brooklyn District Attorney's Office and currently as an attorney with the Legal Aid Society and New York Civil Liberties Union.

*Professor Eve Cary**

Welcome to Brooklyn Law School and to the Fourteenth Annual Edward V. Sparer Public Interest Law Fellowship Forum. I am honored to introduce our speakers today. First, however, I want to take one minute to tell you a little bit about the Sparer Program. The Program was established in 1965 in honor of Ed Sparer, who was a Brooklyn Law School Alumnus and a pioneer in the fields of poverty law and health law. At the time of his death, he was a professor of law on central welfare policy at the University of Pennsylvania Law School. The Sparer Program provides stipends for students who spend ten weeks during the summer during law school working under the supervision of attorneys at nearly any non-profit legal office that serves underserved communities. The program is really a creation of Professor Elizabeth Schneider, who is supported by the generosity of Brooklyn Law School.

The Sparer Committee is made up of faculty members and administration members at the law school, all of whom have careers in public interest law. The program has grown enormously during the past decade. This summer we will be placing twenty-one students who will do a wide variety of public interest work. Other students have completed incredible placements; the students have worked at a number of offices in the ACLU [American Civil Liberties Union], Legal Services, Legal Aid offices, the Center for Reproductive Law and Policy, Central America Refugee Committee; they have done work on human rights issues, mental and physical handicap issues, gay and lesbian issues, and have worked in Native American law offices out west. They have gone to wonderful foreign countries, and not so wonderful foreign countries. We've had students that have worked in Brazil, Jamaica, South Africa, and it has been very exciting.

* Associate Professor of Legal Writing, Brooklyn Law School; J.D., New York University School of Law; B.A., Sarah Lawrence College.

Another goal of the Sparer Committee, besides simply providing stipends, is to set up essentially an old boy/girl network of Brooklyn Law School faculty and alumni who will help students get jobs, because it is very competitive being in public interest. Additionally, a program goal is to give public interest a presence at Brooklyn Law School. We do this by finding speakers to come speak to us at events like this one. We also hold informal luncheons to give all of us ideas about the various ways in which lawyers can practice in the public interest—not simply through full-time jobs, but by leading pro bono into the private practice of law. I think our panel today exemplifies the various twists and turns that a public interest career can take, so I would like to introduce each of the speakers.

Judge Milton Mollen is a Renaissance man and a New York institution. It might be easier to tell you what he hasn't done than what he has. His first encounters with the police were in 1944 when, as an aviation cadet in the U.S. Army shot down over occupied France, he was captured by the Germans, put in a prison work camp from which he managed to escape about a year later, and joined the British occupied forces. That wasn't enough for one lifetime. He came back, went to St. John's Law School and graduated with honors, then went on to a very distinguished career in city and state government. He began working on housing issues, went on to become a judge of the criminal court as well as the Presiding Justice of the [New York State Court of Appeals] Second Department, and also sat on the Court of Appeals by special designation. He returned to city government after that, among other things, acting as Deputy Mayor for public safety. The real reason we have him here today is that he was Chairman of the Special Commission to investigate corruption within the Police Department of the City of New York. This was known as the Mollen Commission, and Judge Mollen will be discussing it today.

Bill Kuntz spent basically the first half of his life in Harvard. He went there as an undergraduate. He got an M.A. and Ph.D. in history, then a law degree—and then he managed to escape from there. He then went into private practice, and now does commercial litigation. He is a partner at Seward & Kissel, and is also an adjunct Professor at Brooklyn Law School. He teaches American Legal History and is the author of a book on criminal sentencing

in the nineteenth century in the cities. He's here specifically because he spent many years since 1987 on the Civilian Complaint Review Board in various incarnations.

Deborah Small is a native New Yorker. She graduated from the Center for Legal Education, a city college, in 1983. She is another Harvard Law School graduate, having graduated in 1987. She spent a number of years in private practice and is now the legislative director for the New York Civil Liberties Union ["NYCLU"],¹ where she works lobbying the legislature on various civil liberties issues. She is the principal author of the New York Civil Liberties Union Report on Civil Liberties and Welfare Reform. The reason she is here today is that she is one of the drafters of the New York Civil Liberties Union Dissenting Report from the Mayor's Task Force Report, called *Deflecting Blame*.² Her interest in the police and the police violence is also connected to the fact that she is the mother of a twenty-one year-old black male.

Finally, I have to digress a little bit in introducing Paul Chevigny, who is responsible for most of the good things in my life. He is a Professor of Law at New York University, where he teaches criminal law, evidence, and a clinic on human rights.

I'll tell you a personal story. When I first got out of college in 1965, I went to work in publishing, as we all did in those days. I worked at *Mademoiselle* magazine telling people what to wear. It was the middle of the Vietnam War and the Civil Rights movement, and I was very unhappy feeling that history was passing me by while I was talking about shoes. Meanwhile, Paul had just been hired to be the director of the Police Practices Project at the NYCLU. I'm told that this man didn't know how the hell he could

¹ At the time of publication, Deborah Small was no longer the legislative director of the New York Civil Liberties Union.

² See Alan Finder, *At The Heart of Report on Police, Some Modest Proposals*, N.Y. TIMES, Mar. 28, 1998, at B2 (discussing the inception of Mayor Giuliani's Task Force on Police/Community Relations in the wake of the Abner Louima police brutality accusations). The New York Civil Liberties Union authored a response to the Task Force's findings in the form of its Dissenting Report. New York Civil Liberties Union, *Deflecting Blame* (visited Nov. 8, 1998) <<http://www.nyclu.org/blame1.html>> [hereinafter *Deflecting Blame*] (discussing the failure of Mayor Giuliani's Task Force on Police/Community Relations to improve perceived lawlessness with the NYPD).

get a secretary for \$95 a week, and Aryeh Neier³ said, "Oh, we'll find some college girl who wants to do good in the world." The next day I walked in the door and I did want to do good in the world. Moreover, I'd only been making \$65 a week. I just thought I'd died and gone to heaven, and I turned out to be right. The next two and a half years working for the Practicing Project were two of the most interesting in my life. As a result, I went to law school.

Paul wrote a book entitled *Police Power*,⁴ which is a study of police abuses in New York City. His next book, *Cops and Rebels*⁵ continued this. For the past decade he has been working on a major comparison of police abuses in cities in the Americas, that produced reports and articles for Human Rights Watch on police abuses in Jamaica, Brazil and Argentina. His book *Edge of the Knife*⁶ compares the New York and Los Angeles police departments. He will give us a comparative view.

³ At the time referred to by Professor Cary, Aryeh Neier was Executive Director of the NYCLU.

⁴ PAUL CHEVIGNY, *POLICE POWER: POLICE ABUSES IN NEW YORK CITY* (1969).

⁵ PAUL CHEVIGNY, *COPS AND REBELS: A STUDY OF PROVOCATION* (1972).

⁶ PAUL CHEVIGNY, *EDGE OF THE KNIFE: POLICE VIOLENCE IN THE AMERICAS* (1995).

*Professor Paul G. Chevigny**

This panel is a little one-sided in that there are no people on it who think that police violence is not really a problem. That being the case, I am going to try to talk about both sides in the course of this discussion. Police violence and police brutality has been a social problem that has beset all urban communities in the U.S. and increasingly, the rest of the world.

The first thing that we have to get straight is that violence is part of the police job. Violence itself isn't illegitimate. Use of legitimate violence—violence for the purpose of enforcing a rule that other people will not otherwise obey—is part of the job. Police are the line of last resort when something cannot be solved by an order, cannot be solved by negotiation, and must be solved by literally pushing someone to do something. They are the people who have to do it.

The problem becomes one of defining the line between the legitimate use of violence and the illegitimate use of violence. We have to distinguish the excessive use of force and police brutality. Force may be excessive, but it may be partly accidental. It may be a mistake in judgment. When we talk about police brutality we are ordinarily talking about something which is beyond a mere mistake in judgment. It is either a deliberate or reckless act that results in the injury of a person, without legitimate justification in the police job. That gives rise, inevitably, to problems of control, because there's a line-drawing problem in virtually every case that involves the police. Acts of violence by the police, particularly in neighborhoods with many poor people who have a lot of contact with the police, ordinarily cause feeling to run high. Regardless of what may ultimately be the justification for the act, there's a controversy about almost every incident. As to the causes of police violence, then, part of it is built into the structure of modern law, as the law is enforced ultimately by force. But as to the use of illegitimate

* Professor of Law, New York University School of Law; LL.B., Harvard Law School; B.A., Yale University.

force; that is, the use of excessive or brutal force by the police: why does it happen?

Excessive or brutal force happens partly because people like us want it to happen. I don't necessarily mean the people on this panel, or the people in the room. But among people like us—people who have something to lose, who have a stake in society—there is a wide spread folk belief that violating the law protects people. We've all heard people say, "Well, if the police have to kick a little butt in order to keep order, so be it." How could that possibly be right? That you have to do something which is not sanctioned by the law in order to make people safe.

There really isn't very much empirical evidence, one way or the other, that violating the law protects people. There is empirical evidence about the use of deadly force. The folk belief used to be that, if the police didn't use their guns as profligately as they did in the 1960's and early 1970's, the police would be in greater danger and civilians would be in greater danger, in the sense that the crime rate would go up. It would, therefore, not be a wise policy to impose more restrictions on police use of deadly force.

Largely, deadly force is something that you can measure, unlike police brutality which is certainly almost impossible to measure. Studies were done by people like James Fyfe¹ that found that a radical reduction in the use of deadly force, which was brought about in the early 1970's, didn't make any difference in the crime rate, didn't make any difference in the arrest rate and didn't make any difference in the safety of officers. In the long run the number

¹ See James Fyfe, *Administrative Interventions on Police Shooting Discretion*, 7 J. CRIM. JUST. 309 (1979).

of police officers shot and the number of civilians shot declined.² We can guess the reasons.

Further, one of the reasons there is police violence—illegitimate police violence—is because there's a story that almost all people may be telling in society: that it is the job of the police to keep order; it is not the job of the law, it is the job of the police; not through the law, but through direct action in the streets to maintain safety. This is a very widespread belief throughout the western world, particularly in America. It gives rise to a lot of police violence because the politicians encourage it: "If we could just get the judges out of the way, if we could just stop these ridiculous applications of the Fourth and Fifth Amendments and let the police do their jobs, society would be so much safer."³ Well, that rhetoric, which is very common in the United States and elsewhere in the Americas, is advancing the idea that it is the job of the police to operate outside the law, independent of the law, on their own authority. And, ultimately, if they do not use the law; if they do not use the arrest power to take people to court and charge them with a crime, then the police are going to have to use violence in place of their arrest power. They do so when they are encouraged by those beliefs to do so.

² Police killings of civilians fell from 353 in 1971 to 172 in 1984 in the fifty largest cities in the United States. *Report Says Tighter Policies Reduce Killings By The Police*, N.Y. TIMES, Oct. 20, 1986, at A20. In New York, killings by the police dropped to 173 for the period 1981-84 as opposed to 314 from 1970-74. *Id.* Killings of police officers in New York City also fell from eighteen for the period 1974-78, to sixteen for the period 1978-1983, and such killings again decreased to thirteen from 1983-1989. Ralph Blumenthal, *Killings by New York Police Drop, Bucking Trend*, N.Y. TIMES, Oct. 8, 1989, at 35. Many commentators see the drop as attributable to more sophisticated training and tighter controls on police use of force. Andrew H. Malcolm, *Change in Enforcement is Said to Cut Violence Between Police and Public*, N.Y. TIMES, Sept. 2, 1990, at section 1, 32.

³ See Michael A. Fletcher, *Changes in Police Tactics Trigger Charges of Brutality*, WASH. POST, Apr. 27, 1997, at A3 (quoting Ronald A. Hampton, executive director of the National Black Police Association stating: "Politicians and police have said that for us to deal with [urban crime] effectively, you almost have to be willing to give up some of your rights and privileges.").

A lot of police confuse the order-keeping function that they perform with the law, so that when there is a defiance of an order given by a policeman, whether it is legally justified or not, they feel that there is a tremendous threat to them. That is one of the reasons why vehicle chases so often result in violence, as in the Rodney King case.⁴ A vehicle chase is an adrenaline-producing episode anyway. But it is also a tremendous threat to authority; it is defiance.⁵ A driver is being ordered to stop, and in response does something very dangerous—racing the car through traffic, threatening peoples' lives.⁶ That is a tremendous threat to authority and it is also a violation of law. Unless someone is injured in such a chase, it is not a terribly serious violation of law, but it very frequently results in some kind of a violent sanction, as in the King case.⁷

Another piece of our commonplace rhetoric that leads to these cases is the "Military Model." We speak of a "war on crime," and the police have to be the army in that war on crime. If the police act like an army, people may feel as though they are an occupying army. There is already rhetoric that the police are an occupying army in the ghetto. A military acts against an enemy. Ordinarily, they wear different color uniforms for that very purpose, so they shoot at the "right" people. So, the military analogy almost invariably leads to a breakdown in respect for law because the police act like an army. But the police are not military at all. The police are civilians. They are acting with other civilians. They are

⁴ Police officers often suffer from "high-speed pursuit syndrome," a condition that results in an adrenaline rush brought on by the challenge of authority displayed by a suspect in a high-speed automobile chase. Mark Petix, *Danger Brings Out the Fight in Officers, Psychologists Say*, THE PRESS-ENTERPRISE (California), April 3, 1996, at A4. This adrenaline rush has been partially blamed for the behavior of Los Angeles police officers who attacked motorist Rodney King in 1991. Susan Christian, *Orange County Police Criticize Violent Arrest; Some Speculate on How it Occurred*, L.A. Times, March 9, 1991, at A22. Following a high-speed chase, King was dragged from his vehicle and "was repeatedly hit with nightsticks and kicked by officers while as many as 11 other officers stood by." *Id.*

⁵ Petix, *supra* note 4, at A4.

⁶ Petix, *supra* note 4, at A4.

⁷ Christian, *supra* note 4, at A22.

supposed to make their decisions by evaluating individuals on a case-by-case basis. There is no enemy. We, the other civilians, are the enemy.

I want to talk about the "cures" briefly. There aren't any real cures. Police violence isn't going to go away. The controversy over whether violence is justified in given cases is never going to go away, although it can, of course, be minimized. One thing I want to say about the cures is that the situation has gotten a lot better in the thirty years since I started working on this problem. The amount of deadly force since the early 1970's has dropped fifty percent in the major cities.⁸ If you take them as a whole, it is true in every city. It is not true in Los Angeles. But it is true, that in New York City deadly force dropped much more than fifty percent. In 1971, which was the high tide, just before the reforms were put in, the police killed eighty-seven people.⁹ Now, if the police kill fifteen every year, it is a large number.

There is also much less violence to extract confessions. If the Abner Louima case turns out to be sustained, that is a case of torture, although not for the purpose of extracting a confession. Torture by the police has really dropped enormously since the days of the *Miranda* decision.¹⁰ Much longer ago, in the early police reports in the 1930's, torture was virtually universal in U.S. police departments.

Now to give the internal controls their due, many effective reforms are internal controls. The control of deadly force is largely the result of a change in regulations, which was forced by the departments themselves, and has led to the decreasing use of deadly force and a decrease in deaths. The attack on the use of violence to extract confessions, of course, was led by the courts, but the police cooperated. Those most violent abuses have passed from the scene because of increasing accountability.

Eve Cary asked me to say a little comparing other nations. The rhetoric in Latin America with respect to police violence is very similar. It's chillingly similar about the Military Model, and letting

⁸ PAUL CHEVIGNY, *EDGE OF THE KNIFE: POLICE VIOLENCE IN THE AMERICAS* 66-67 (1995).

⁹ *Id.* at 66.

¹⁰ *Miranda v. Arizona*, 384 U.S. 436 (1966).

the police do their job and getting the courts out of the way. That rhetoric is all there, but the level of violence is incredibly, astronomically higher. There are cultural differences with respect to the use of violence, but one of the big differences is impunity and lack of accountability. There is a lot more accountability here in the U.S., and it has taken us a couple of generations to develop it. It is enormously important.

About that accountability: Los Angeles had a bigger scandal than New York about police violence. But I think that L.A. is doing a better job of control at this point than New York. We have a civilian review board, which is an excellent body, but the police are doing, to put it brutally, their best to make it as ineffective as they can. They do not cooperate. They do not discipline in a many cases where the board finds the complaints justified. Until the pressure from the Louima case,¹¹ the Mayor was trying to starve the organization. Moreover, a review board that just takes complaints on a case-by-case basis cannot do the job, particularly without political cooperation. We need auditors who will oversee the department, to make sure that requested reforms are carried out. The Mayor's own task force called for such an auditor, and the Mayor refused to do it.

More than an effective auditor, we need somebody inside the Department. An Inspector General acts as a conveyor belt, a vector, who will get on the Commissioner's back and say, "You've got to do these things, you can't just be talking about them, you have to do them. What are we going to report to the auditor that we have done to carry out these reforms?"

Finally, I want to talk just briefly about the tort system. The tort system, with respect to the control of police brutality, at this point is, in L.A. and New York and in most big cities, totally ineffective. Millions of dollars are paid in damages and the city does nothing to convey to the police department that there are

¹¹ See Dan Barry, *Charges of Brutality: The Overview; Officer Charged in Man's Torture at Station House*, N.Y. TIMES, Aug. 14, 1997, at A1 (discussing the Louima accusations of police brutality); Alan Finder, *At The Heart of Report on Police, Some Modest Proposals*, N.Y. TIMES, Mar. 28, 1998, at B2 (discussing formation of the Mayor's task force to investigate the matter).

systemic problems. The cities do not survey their dockets to find out what is wrong systematically.

When an enormous civil judgment is made against an officer, nothing is put into his file. People that have worked at municipal departments have tried to change this, but this is an index of the fact that, underneath the surface, these cities essentially don't care about this problem. They really think that it's the cost of doing business. There may be a payout of millions of dollars, and if you ask, "What would you do to create a nexus between these enormous judgments and the problem of police brutality?" they say nothing in reply. That attitude is an index of the fact that the cities really do not care to do anything effectively about it.

Unlike Paul, I was an adjunct professor, not a full professor, so I can speak while I'm seated. I think Paul was correct to say that all of us on the panel here perceive police violence to be a problem. I do think that it's a problem to be kept in the proper perspective. Paul remarked on whether we can assist in that goal, and I intend to do the same thing; to make certain that it is kept in proper perspective.

First of all, I will tell you, as is said in my report,¹ that we found that the overwhelming majority of police officers are not corrupt; they are not brutal. However, the problem does exist. When I speak about the causes, I want to make clear that I am not using "causes" as a synonym for "justification." But I do think we have to look at what the causes are in order to address the potential for cures. I could sum up the causes, in a broad sense, to the frailties of human nature. But I'm supposed to speak for fifteen minutes, so I will elaborate on that.

When I say human nature, I mean that there are possibly 38,000 police officers in the City of New York.² I suggest to you that if you take 38,000 of any group—lawyers, judges, law students, ditch diggers, clergymen—you're going to find a certain percentage who are venal, who are weak, who are susceptible to doing the wrong thing, particularly under pressure. It is therefore not surprising that

* Chairman, Special Commission to Investigate Corruption Within the Police Department of the City of New York, 1990-1992; Presiding Justice, Appellate Division, Second Department of the Supreme Court of the State of New York 1978-1990; LL.B., St. John's University School of Law; B.S., St. John's University.

¹ THE CITY OF NEW YORK COMMISSION TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE ANTI-CORRUPTION PROCEDURES OF THE POLICE DEPARTMENT, COMMISSION REPORT (1994) (Hon. Milton Mollen, Chair) [hereinafter MOLLEN COMMISSION REPORT].

² In 1996, the New York City Police Department was the largest in the country, employing 36,813 full-time officers. *Justice Dept. Reports Sharp Rise in Police Officers on Patrol*, WASH. POST, June 8, 1998, at A8.

among a department of 38,000 you are going to find some that will do the wrong thing, whether it be in form of money corruption, or brutality or excessive violence. The use of power is a form of corruption. So, it's not unusual to find that some police officers are going to do the wrong thing, including using excessive violence—at times rising to the level of brutality.

There are additional factors affecting how a police officer performs his or her job. First, there is the fact that the law of averages will tend to bring out some who do the wrong thing. This is exacerbated by the fact that there are some people who are drawn to a police department; who want to be police officers because they like the concept of power. Sometimes that power becomes abusive power. Take a young police officer coming out of the academy. The police department gives him a club, gives him a gun and gives him the power to arrest. When I was presiding judge of the Appellate Division, even I did not have the power to arrest. Yet, this young officer has this power, along with all of these other accouterments of his job.

Furthermore, the job tensions are enormous. It is a difficult and dangerous job for a police officer out on the street, and there are tensions that go with the need to protect one's safety, one's partner's safety and the public's safety.³ Suppose the police officer and his partner get a call to go, at 3 o'clock in the morning, into a dark alley. There is a suspicion that a robbery is going on. The officers go into that alley, and someone, a robber, comes rushing at them. It is fine for us to sit and argue calmly and coolly about how we would handle that situation, but the officer in that alley has

³ The job tensions are created in large part by community residents:

Most of all, cops feel they are scorned, feared and mistrusted by the residents of poor, drug-infested neighborhoods they are trying to help. So it is no wonder they lose it once in a while and lean a little too hard on civilians. Nobody understands what it's like to live in fear that some crazy kid will cut you in half with a machine gun. Nobody but a cop can know the daily diet of frustration, temptation and provocation they are forced to eat.

John McLaughlin, "*Us Against Them*," *Cops Have Reason to Feel Besieged But No Excuse for Rogues*, STAR-LEDGER (New Jersey), Oct. 5, 1993, available in 1993 WL 3490872.

to confront that robber immediately. He should identify himself, show his badge, he should say "Stop!"—all those things are proper police procedure. But one should understand that sometimes the circumstances call for a different action, a reflex action. Reflex is not necessarily justified, but sometimes one has to understand that, under those circumstances, an officer may not act in an ideal fashion. There are all kinds of street confrontations, and some should be understood in terms of the need for the use of violence. All indications are that violence, in and of itself, is part of the job.

The question is: when do you step over the line to excessive violence and brutality? Unfortunately, sometimes the police do step over the lines. I have mentioned that the job creates tensions which ultimately lead to that kind of violent conduct. In addition to that, you have, unfortunately, the police culture.

This is not unique to New York. I remember reading Joseph Wambaugh's books⁴ many years ago. He is a former police officer of the Los Angeles Police Department. He wrote about the brutality and the "us vs. them" culture that is very much part of almost any police department. Any one who has studied a police department will tell you that it is an inherent aspect of police work that officers develop an "us against them" mentality, whereby they see anyone other than members of their colors in the police department as being "them, not part of us." This leads to confrontations that many times should not take place.

The problem of police brutality is further enhanced by the fact that a city, such as New York, is a cosmopolitan city that has many different cultural groups and a lack of understanding of different cultural groups on the part of many police officers. I, for one, feel very strongly that it wouldn't be a cure, but it would be helpful, if we had a residency requirement for police officers in the City of New York. I think that would increase the likelihood that we could get police officers of various cultures that do live in this city who have a great understanding of the people in this city.

Now I would like for a moment to address some of our potential cures. There is no single cure for police violence. Paul

⁴ Joseph Wambaugh writes police fiction novels. Some representative works include *FUGITIVE NIGHTS* (1992) and *THE DELTA STAR* (1984).

said it, and I agree totally. We're not going to cure it because of some of the facts that I've mentioned here. But what we can do, certainly, is not just surrender and say "Well, it is inevitable, it is going to take place, and therefore it is a necessary part of policing." I think it can be controlled.

For example, there are internal controls. I say that it is the responsibility of the leadership of the police department and the leadership of the city government to establish internal controls that will minimize the amount of excessive force and brutality within the department.

I'll mention briefly some of the things that the Mollen Commission suggested. We recommended that the minimum age limit for new police officers should be increased from twenty to twenty-two years-old. This has been implemented by the Police Department. The Commission felt that we'd like to see that police officers on the street have some sense of maturity, responsibility and self-discipline. In that regard, we recommended increasing the age to twenty-two, and also requiring two years of college education or its equivalent—for example, military service.⁵ Some of those who go into the military at the age of eighteen come out at the age of twenty-two. Presumably—hopefully—a person going into the military will gain some sense of self-discipline, maturity and responsibility.

We also felt that the Department was totally remiss in its investigation of potential candidates.⁶ The director of training for

⁵ Applicants to the NYPD in 1998 must have completed either 60 semester credits at an accredited university or college, or must possess a high school diploma with two years honorable military service. New York City Department of Citywide Administrative Services, *Notice of Examination* (visited Nov. 15, 1998) <<http://www.ci.nyc.ny.us/nyclink/html/dcas/html/police.html>>.

⁶ See MOLLEN COMMISSION REPORT, *supra* note 1, at 112-17. The *Mollen Commission Report* ascribes many problems in the New York City Police Department to "hastily conducted" background investigations that allow applicants with juvenile felony adjudications or drug problems to become officers, frequently before background checks are completed. MOLLEN COMMISSION REPORT, *supra* note 1, at 113-14. The NYPD "blame[d] these delays and oversights on the heavy workload of applicant investigators," a condition perhaps exacerbated by the large number of New York City Police Academy graduates—6,000 from 1992-1994. MOLLEN COMMISSION REPORT,

the Police Department, the Deputy Commissioner, testified at hearings and admitted that the training was totally inadequate.⁷ There is a great deal of room for improvement. I believe that they are improving their training, and there is definitely a need for it. There has to be an emphasis on self-control, on not using violence, except when it is warranted, and then only to the extent that it is warranted and justified. We said that there should be greater amounts of psychological investigation. Some people just are not fit to be police officers. They are fit to do a lot of other things, but not to be police officers.

I think that there should be a greater emphasis on the cultural diversification in this city. There are various cultural groups, racial groups, ethnic groups that comprise the citizens of our city. There should be great understanding on the part of the police officer who goes into these communities. The fact is, some cultural groups socialize at night, on their stoops, in their community and on their streets. It is part of the culture they come from, and it is part of the culture here. I don't say this to allow violations of the law, or to allow people to disturb their neighbors, because they are accustomed to certain things, but there is a way of dealing with it if you have understanding. I think that can be done if you can educate and reform and train people to understand more about other groups.

supra note 1, at 115.

⁷ MOLLEN COMMISSION REPORT, *supra* note 1, at 119-23. With regard particularly to integrity training, "[m]ost officers found that their instructors were mediocre; that they lacked teaching abilities and practical experience; that they relied almost exclusively on materials from outdated lesson plans with little relevance to the challenges facing officers today; and therefore lacked credibility with their classes." MOLLEN COMMISSION REPORT, *supra* note 1, at 119. Further, the Mollen Commission found that New York City Police Academy training itself could lead to the corruption of new recruits:

[M]any officers told us [at the Commission] that it was at the Academy where they first became immersed in the attitudes of a police culture that promote and protect corruption. In both public and private hearings, officers testified that interaction with instructors and other recruits at the Academy began their acculturation into the dynamics of police culture and the perceived necessity of self-protection and tolerance for police misconduct.

MOLLEN COMMISSION REPORT, *supra* note 1, at 119.

We on the Commission also found a total lack of supervision of police officers.⁸ Students of police and models of the police department will tell you that there should be approximately one sergeant for every ten police officers.⁹ We found that in some precincts there was one sergeant for thirty to thirty-five police officers.¹⁰ In fact, at night when you need them most, there is sometimes only one sergeant covering two precincts.¹¹ Clearly, this represents inadequate supervision. When we asked officers

⁸ MOLLEN COMMISSION REPORT, *supra* note 1, at 79-84. The Mollen Commission found that the failure of supervision permeated the New York City Police Department from the top down. For example, many precinct supervisors did not believe it was their job to unearth and correct corruption, and many, fearing a loss of acceptance and other repercussions from supervisors, had difficulty moving from patrol officer to supervisor, engaging in what the commission called "willful blindness" to precinct corruption. MOLLEN COMMISSION REPORT, *supra* note 1, at 80. Further, Police Commissioners and top managers failed to perceive and correct these supervisory problems. MOLLEN COMMISSION REPORT, *supra* note 1, at 82. The Mollen Commission also noted that the number of supervisors at the precinct level was inadequate. MOLLEN COMMISSION REPORT, *supra* note 1, at 82.

⁹ MOLLEN COMMISSION REPORT, *supra* note 1, at 82.

¹⁰ MOLLEN COMMISSION REPORT, *supra* note 1, at 82. The Commission referred to this ratio as "unmanageable" and "too large to effectively supervise . . . subordinates." MOLLEN COMMISSION REPORT, *supra* note 1, at 82.

¹¹ MOLLEN COMMISSION REPORT, *supra* note 1, at 82. One former probationary sergeant from the 75th precinct was "routinely" placed in supervision of two precincts that were known to be "corruption-ridden." MOLLEN COMMISSION REPORT, *supra* note 1, at 82. One lieutenant "was given the impossible task of being the sole supervisor for three precincts on a Saturday night," supported only by two walkie-talkie radios. MOLLEN COMMISSION REPORT, *supra* note 1, at 82. Many officers performed their duties with no supervision at all. MOLLEN COMMISSION REPORT, *supra* note 1, at 82. In addition to their supervisory tasks, many sergeants were required to handle heavy paperwork loads, reducing the supervisory time available. MOLLEN COMMISSION REPORT, *supra* note 1, at 83. Sergeants were also frequently called to respond to radio runs to fill in for busy patrol officers; because they performed the same functions as patrol officers, their authority over those officers suffered. MOLLEN COMMISSION REPORT, *supra* note 1, at 83. The supervisory failures enumerated by the Commission were "often the most acute in those crime-ridden precincts where most corruption opportunities abound[ed], and where effective, experienced supervisors [were] most needed." MOLLEN COMMISSION REPORT, *supra* note 1, at 83.

during our investigation, at our public hearing, whether they were concerned about their supervisors catching them doing things that they shouldn't have been doing. They sneered and laughed and said that was a silly question because there was no supervision. I think that the Department should take some steps to rectify this situation so that there is adequate supervision. The human tendency is that, if you think you are under surveillance, if somebody is looking at you, if you are responsible to someone who is there on the job watching how you perform, then you are going to perform in a much better way than you would if you were totally free to do what you please. Supervision, we think, is an important aspect of policing.

Most important of all—absolutely most important—is the sense of commitment: the sense of commitment from the top level down through the Department. The Police Commissioner must have that sense of commitment. He must impart it through everyone in the chain of command. Precinct commanders, borough commanders and prison commanders all have to understand that they will be held accountable. Accountability is the other side of the coin of commitment. If people know they will be held accountable under supervision, then individual police officers will know that there is zero tolerance. The concept is then understood that there will be zero tolerance so that, if you use excessive force, you are going to have to answer for it.

Paul [Chevigny] made the point, and Bill [Kuntz] will elaborate on it, that the Civilian Complaint Review Board ["CCRB"] has made recommendations and has found that in many instances that there was an excessive use of violence and force, and yet in many instances, the punishment that was meted out was relatively minor.¹² Clearly that does not discourage the kind of brutality that

¹² See McLaughlin, *supra* note 3 (noting that after the creation of the all-civilian Board, New York City Mayor Giuliani "want[ed] a return to a board evenly split between police officials and civilians—an us-against-them arrangement that resulted in very few findings against cops charged with brutality and was roundly distrusted by minority leaders"); Sheryl McCarthy, *N.Y. Cop Review Doesn't Work*, *NEWSDAY* (New York), Sept. 23, 1992, at 4 (noting problems with the CCRB, including a low rate of substantiation of civilian complaints, and the low rate of punishment for officer against whom claims were

takes place on occasion. It is, therefore, important that there be a sense of commitment from everyone from the top down, as well as a sense of accountability.

I would just briefly touch on a two more issues. In addition to the price that we pay for brutality individually, millions and millions of dollars are paid out by the city every year for acts of brutality by police officers. An enormous amount of money is spent by the city as a result of law suits that are brought up on behalf of the victims of brutality.¹³

Another insidious impact of brutality and excessive violence, coupled with corruption, is jury nullification. Jury nullification occurs when a jury finds people not guilty of crimes, where there is a good deal of proof, but where the proof consists of testimony by police officers.¹⁴ This practice indicates a lack of comfort with, and faith in, police officers as a result of the negative impression people get because of these acts of violence and corruption.¹⁵

I remember when I started out as a trial judge a long, long time ago. When the police officers testified, and most of the cases were criminal, police officers were used as witnesses. Almost automatically there was a conviction. In the last few years, however, right up to the present time, there has been case after case where there is strong testimony, but it is a police officer's testimony. The jurors

substantiated). For example, after the Tompkins Square Park riot of 1988, the CCRB handled 121 civilian complaints, only about a dozen officers were found guilty, and only two of those received punishment, both in the form of suspensions. *Id.*

¹³ See David A. Love, *What's Going On? Rising Tide of Police Brutality*, N.Y. AMSTERDAM NEWS, Apr. 26, 1997, at 13 (noting that money damages paid to police brutality victims by New York City rose from \$7 million in 1990 to \$32 million in 1996, and that from 1992-1997 the City paid out a total of over \$100 million to such victims).

¹⁴ Jury nullification is "the practice of deciding to acquit the guilty based on a juror's own sense of justice or fairness" rather than upon the law. Deborah Pines, *'Nullification' Will Permit Juror's Removal*, N.Y.L.J., May 21, 1997, at 1 (describing a recent Second Circuit decision that allowed a judge to dismiss a juror "where there is 'no doubt' that they 'engaged in nullification'"). Supporters of jury nullification characterize it as a way to "humanize the law," while detractors say it "invites anarchy." *Id.*

¹⁵ *Id.*

are skeptical, and they don't trust the police. That is a very unfortunate impact arising from the fact that, at times, police officers do use brutality or are corrupt. It causes cynicism about the criminal justice system, and our society suffers as a result. Really, it is absolutely incumbent upon the leadership of the Police Department and the leadership of the city government to make clear that the City's Police Department is to be looked upon as a positive factor—not as a negative factor; not as brutal and corrupt.

I think that part of rebuilding the image of the police is to bring about a greater sense of relationship and interaction between the community, and the members of the police department. I think that it is imperative that be done. It is so important that the police respect the members of the community, and members of the community respect the police. A great deal of effective law enforcement results from information provided by members of the community, and, to the extent that there is a lack of confidence in the police department, the result is less effective law enforcement. In general, whether you are talking about brutality or corruption or any of the other negative aspects of police and law enforcement, it is important that there be mutual respect of the members of the community and the members of the police department. I think that is something that has to be worked at from both ends of the perspective.

*William F. Kuntz II**

Although I have also had the good fortune to serve as an adjunct professor of law, I assure you that I have the good wisdom never to deliver an address while seated in the presence of the former presiding judge of the [Appellate Division] Second Department and former deputy mayor. I have to begin with a confession that, to serve on a panel with Judge Mollen, Professor Chevigny, and Deborah Small is really the ultimate act of chutzpah on my part, and tolerance on theirs, because these three individuals have done a great deal, both recently and historically, to educate New Yorkers about the police. Judge Mollen continues to remain a model of the wise jurist and practical statesman. Professor Chevigny is one of the reasons I wrote my doctoral thesis, which was later published as a book, on criminal sentencing thirty years ago.¹ Deborah Small will talk about the NYCLU's Dissent,² and will give you some insight as to the macro issues dealing with the police.

My view, however, is a micro view of events from 1987 to the present, from my tiny perch on the City's most talked about, and perhaps least understood, agency, the Civilian Complaint Review Board³ ["CCRB"]—also known as the ineffectual Civilian Complaint Review Board, the lame Civilian Complaint Review Board, the hopelessly conflicted Civilian Complaint Review Board, and the

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¹ WILLIAM F. KUNTZ II, *CRIMINAL SENTENCING IN THREE NINETEENTH CENTURY CITIES: A SPECIAL HISTORY OF PUNISHMENT IN NEW YORK, PHILADELPHIA 1830-1880* (1988).

² See *infra* comments of Deborah Small pp. 118-19 (discussing the NYCLU's Dissenting Report to the Mayor's Task Force on Police/Community Relations).

³ See Deandra Shuler, "*Us Against Them*": *Police Corruption and Brutality (Part I)*, N.Y. BEACON, Aug. 14, 1996, at 2 (describing the genesis of the CCRB in 1953 and its changes through 1996).

weak Civilian Complaint Review Board.⁴ You can understand why I have survived for eleven years on the CCRB.

I want to talk a bit about the CCRB's history, its significance and what, in fact, may be its future. The CCRB actually began in 1953 when that noted civil libertarian J. Edgar Hoover—you are allowed to laugh—noticed that the police had reported more stolen cars in New York City than there were, in fact, cars in New York City. The police were receiving kickbacks from the insurance companies for false filings. As a result, the Police Commissioner appointed three deputy commissioners to take complaints from the public, i.e., civilian complaints. Hence, the name "Civilian Complaint Review Board"—to deal with complaints about the police department from the public, dealing with both corruption and brutality.

In the 1960's, due to certain demographic and sociological changes, particularly involving unease in the African-American community, New York City Mayor John V. Lindsay decided that he would modify the CCRB by Executive Order by appointing civilians.⁵ The reaction was fierce and immediate. The Policemen's Benevolent Association vociferously opposed it. They ran a fear-city campaign on television and radio.⁶ They supported a

⁴ See Chuck Bosetti, *Pittsburgh Police: Betrayed & Abused*, PITT. POST, Dec. 14, 1997, at B1 (quoting New York City Councilman Sheldon Leffler stating: "[W]e created the CCRB out of a hope . . . to bolster public confidence in an independent civilian complaint process. But in the first four years it's really questionable whether this has happened. There's a good chance that the reverse has happened."); see also Sheryl McCarthy, *N.Y. Cop Review Doesn't Work*, NEWSDAY (New York), Sept. 23, 1992, at 4 (noting public disaffection at the low number of civilian complaints "substantiated" by the CCRB, the lack of police officer testimony to the CCRB, and the disparity between redress provided by the CCRB and the increasingly successful suits against the Police Department in court).

⁵ See Alan Finder, *Council Votes to Broaden Police Panel*, N.Y. TIMES, Nov. 7, 1986, at B1 ("[In 1966,] Mayor John V. Lindsay appointed four outsiders to a seven-member panel [making up the CCRB]."). See also Selwyn Raab, *Charges of Brutality: The Force*, N.Y. TIMES, Aug. 17, 1997, at 41 (providing a chronology of the CCRB).

⁶ The police officer's union, however, successfully pushed for a referendum abolishing Mayor Lindsay's appointment of outsiders. Finder, *supra* note 5, at B1. The Policemen's Benevolent Association ("PBA") campaigned against the

deliberately confusing referendum: "Vote 'yes' if you oppose civilian review." They warned of police in handcuffs. As a result, the Lindsay Board containing civilians went down in a fiery demise and decisive defeat.⁷ I was a teenager, and it made a lasting impression.

Post-Lindsay Board years saw the return of the CCRB as a completely internal organ of the Police Department.⁸ But slowly, almost imperceptibly, changes were put through. A black graffiti artist, who was arrested, died of injuries received from beatings received while in custody.⁹ A black grandmother, who was the source of noxious odors and who was a public nuisance and needed to be evicted from public housing, was shotgunned to death by an officer described by former Police Commissioner Benjamin Ward as "Robocop."¹⁰ Low-level drug dealers who were dragged to a

civilian-member Board, leading to a referendum that spelled its defeat. Harold Baer, Jr., *Watching the Watchman*, N.Y.L.J., Aug. 28, 1991, at 2. "The PBA created an artificial and unjustified polarization in the community: anyone who did not oppose the [civilian] board was 'anti-police.'" *Id.* Police officers were as misled as civilians; "cop[s] on the beat were told that the [civilian] board would spell the professional and personal downfall of even the most reasonable among the police officers." *Id.* Later opposition to civilian Boards used a somewhat more reasoned approach. For example, in 1987, twenty years after Mayor Lindsay's original proposal, the PBA claimed that civilian control of the Board would hurt officer morale and fail to fairly evaluate their performance. Robert D. McFadden, *11 Named to Civilian Police Panel After 20-Year Debate in New York*, N.Y. TIMES, Sept. 5, 1987, at 1.

⁷ Mayor Lindsay's civilian Board was defeated in the referendum by a three-to-two margin. *See* Baer, *supra* note 6, at 2.

⁸ *See* Finder, *supra* note 5, at B1 (discussing the failure of the CCRB to integrate civilians into the police review process).

⁹ The graffiti artist referred to was Michael Stewart, who died on September 15, 1983 after six police officers accosted him, then beat him. Isabel Wilkerson, *Jury Acquits All Transit Officers in 1983 Death of Michael Stewart*, N.Y. TIMES, Nov. 25, 1985, at A1. Three of the officers were indicted on charges of criminally negligent homicide; the remaining three were indicted on perjury charges. Carol Vecchione, *Transit Cops Charged in Beating Death*, U.P.I., Feb. 21, 1985, available in LEXIS, Nexis Library, UPI File. All six officers were subsequently acquitted. Wilkerson, *supra*, at A1.

¹⁰ The grandmother referred to was Eleanor Bumpurs, a 66 year-old black woman with mental problems who lived in a government-subsidized apartment in the Bronx. *See* Dan Collins, *Tragedy in the Bronx*, U.P.I., Nov. 9, 1984,

police station in Queens were subjected to stun guns and cattle prods¹¹—devices reminiscent of Bull Connor¹² and the pre-reincarnation of George Wallace.¹³

Finally, black and Latino New York City Council members and their white allies convinced a skeptical Mayor Edward I. Koch and a reluctant Police Commissioner Ward to appoint members of the public to a new CCRB consisting of twelve members—six from the public and six from the police department.¹⁴ The mayoral

available in LEXIS, Nexis Library, UPI File (describing the entry by six white officers wearing protective masks and plastic shields in to Bumpur's apartment, which was filled "with mist and a harsh odor"). According to police officers, Bumpurs faced the officers with a 10-inch knife and struck at one of them. *Id.* Fearing she was about to stab the officer, Officer Stephen Sullivan, a 19-year veteran of the police force, fired two shotgun blasts, killing her. *Id.* Officer Sullivan was subsequently charged with first degree manslaughter. *Officer Charged with Manslaughter in Shotgun Killing of New York Woman*, L.A. TIMES, Feb. 1, 1985, at 5.

¹¹ On April 22, 1985, a sergeant and a police officer from the 106th precinct in Queens were arrested for assaulting a suspect with a stun-gun at a station house to force a confession. William R. Greer, *Turmoil in Troubled Precinct Centers on "The Strip,"* N.Y. TIMES, Apr. 26, 1985, at B1. The suspect, Marc Davidson, an 18 year-old, had been arrested for selling ten dollars worth of marijuana to an undercover policewoman. *Id.* Davidson was burned 40 times in the incident. *Id.* One officer, Richard Pike, was convicted of torture in connection with the incident. Ellis Henican, *Stun-Gun Petition for Parole is Probed*, NEWSDAY (New York), Apr. 12, 1989, at 2.

¹² The former Police Commissioner of Birmingham, Alabama, Theophilus Eugene "Bull" Connor earned notoriety for deploying fire hoses against civil rights protesters. Jeffrey A. Frank, *Are There New Rules of History?: The Transcendent Judgments of Electronic Imagery*, WASH. POST, May 3, 1992, at C3. See also David B. Oppenheimer, *Kennedy, King, Shuttlesworth and Walker: The Events Leading to the Introduction of the Civil Rights Act of 1964*, 29 U.S.F. L. REV. 645 (1995) (describing violent opposition to civil rights protesters in the summer of 1963).

¹³ George C. Wallace was Governor of Alabama from 1962 to 1986. Originally a supporter of segregation, he later supported integration. See Rick Bragg, *Quietly, Alabama Troopers Escort Wallace for Last Time*, N.Y. TIMES, Sept. 17, 1998, at B15 (discussing the life and death of Wallace).

¹⁴ See McFadden, *supra* note 6, at 1 (reviewing the history of conflict leading up to the appointment of the new CCRB members under Mayor Koch, and listing the names and backgrounds of the first eleven members of the new panel).

appointees were appointed upon advice and approval of the City Council, and the Police Commissioner appointed six Deputy Commissioners to the Board.¹⁵

I was appointed in that first group of public and civilian commissioners who took office in Fall 1987. I served from 1987 to 1992 when I resigned, having proved too progressive for some, too conservative for others, and too ornery for just about everybody. Much to my surprise, I was asked by city officials to testify as an elder statesman about the need to have a police presence on an external CCRB at the time of large police demonstrations during City Council hearings on the Board. Much to my shock, I was invited to return to the CCRB in 1993. I have, therefore, the dubious distinction of being the only member of the 1987 Board to still be at the CCRB several years later. From that vantage point, I have seen some of the good, the bad and the ugly things that we have defined as police misconduct. I want to speak briefly to the issues of what police misconduct is, how we define it and how we stop it.

There are three micro-examples I would like to provide; the true experts—the Judge, professor and civil libertarian will provide the macro-examples. For example, the Military Model¹⁶ is very inapposite when applied to the police department, because in the military, most of the discretion resides in the commander. The “grunts” in the field have virtually no discretion. In the police world, however, most of the discretion resides in junior officers who are unsupervised, or as the judge indicated, under-supervised in the field.¹⁷ This is a major difference between the military and police models. The point was also made by the professor about the interplay between tort law and awards against the police.¹⁸ There is the saying in the police department: “It is better to be judged by

¹⁵ McFadden, *supra* note 6, at 1.

¹⁶ See *supra* comments of Paul Chevigny at p. 88 (explaining the “Military Model”).

¹⁷ See *supra* comments of Hon. Milton Mollen pp. 98-99 (describing the failure of police to properly supervise officers in the field).

¹⁸ See *supra* comments of Professor Paul Chevigny pp. 90-91 (describing the tort system’s reaction to police brutality).

twelve than carried by six.” That saying is their internal mantra with respect to whether or not to take action.

I would like to give three micro-examples of the kinds of cases that we have confronted, with no names obviously, but real cases, on the old Board and new Board. In the first case, a woman calls the Board to file a complaint on behalf of her teenage son. She says that an officer has uttered an ethnic slur against her son. The cop said, according to the woman, “Be careful boy, don’t you know cops are shooting niggers out here?” The wrinkle, of course, is that the woman, the son and the cop are all black. Does it make sense for the CCRB to characterize this as an ethnic slur? Would black officers stop using the phrase if it were? Should such a case be mediated or facilitated? If so, should the same option be offered to a white officer who considers himself “the white shadow,” who gets down with the brothers and sisters and uses the same language? What kinds of equal protection risks are run?

In case two, note the contrast between the old Board and the new Board. A young, poor Latino with a criminal record and convictions for narcotics dies in police custody. Traces of cocaine are found in his blood. Does the officer have to be questioned? I have had two answers. Under the old Board: “No. The guy was obviously a user. We will exonerate you.” Under the new Board: “No. The guy was obviously a victim of police misconduct. We will substantiate.” The Bill Kuntz way: I think you talk to the police officer to try to find out what happened.

In case three, a young Latino cop has an exemplary record and no CCRB complaints, with one exception—he cannot stand what he perceives as favored treatment of Latinas, and he proceeds to tell them so on every interaction. There is also a white cop with an exemplary record, with one exception—he is an ardent right-to-lifer, who lectures women entering abortion clinics that he has been to protect. Should these cops have cases substantiated against them or have cases unsubstantiated against them, or should the commanders have the good sense to take the Latino cop out of Williamsburg, Brooklyn, and take the other cop away from abortion clinic duty? Just switching them would have done wonders for their respective careers. Some of this stuff is rocket science, but some of it is not. It was amazing that we [on the Board] had to say to them [the police department] “just switch them.”

These are the micro-cases—the force, abuse and offensive language cases—which have historically constituted the core mission of the CCRB’s mandate of both the old and new Boards, even though we have been defined by the mega-cases to which the Judge and professor allude.

On a final note, I would be remiss if I failed to address at least one macro-issue. There is a startling truth in the *Mollen Commission Report* on pages 25-50,¹⁹ and that is the fact that the link between police brutality and police corruption can no longer be denied. In such a world, with the attempt to establish an independent police investigation, an auditor has to date been unsuccessful. Will we see yet another incarnation of the CCRB, one that embraces and understands the link between police force and brutality, that seeks to address the issues of corruption as well? Will we someday have a CCRB taking under its wing corruption under the rubric of abuse rhetoric? For some, that is a scary thought.

Fortunately, however, my time is up, and the judge, professor, and civil libertarian will hopefully give me a passing grade for having the judgment to spot the issues, and the wisdom to leave it to the smart folks to come up with the answers.

¹⁹ See THE CITY OF NEW YORK COMMISSION TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND ANTI-CORRUPTION PROCEDURES OF THE POLICE DEPARTMENT, COMMISSION REPORT 25-50 (1994) (Hon. Milton Mollen, Chair) (discussing police brutality and corruption).

Good afternoon. It's been a while since I've been in a law school environment, and the first thing that hit me is the seriousness on everyone's faces when they came into the room. At first, I chalked it up to the fact that I'm in a law school environment. Then I thought about the fact that it is appropriate that be so, because it is a serious topic that we are talking about today.

I want to tell you about how it was when I first came to be on the Abner Louima case.¹ Last Summer I had the good fortune of being able to travel with a group of African-Americans to South Africa to attend a conference. While I was there I had the privilege of being able to attend some of the hearings of the Truth and Reconciliation Commission.² The hearings that I attended were in

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¹ On August 9, 1997, Louima was arrested by New York City police officers following a scuffle outside a nightclub in Brooklyn. Dan Barry, *Charges of Brutality: The Overview; Officer Charged in Man's Torture at Station House*, N.Y. TIMES, Aug. 14, 1997, at A1. Louima alleges that, following his arrest, police officers from the NYPD's 70th precinct attacked him in the station house. *Id.* Among Louima's most publicized accusations was that the accused officers had sodomized him with the wooden handle of a toilet plunger. See David Kocieniewski, *Injured Man Says Brooklyn Officers Tortured Him in Custody*, N.Y. TIMES, Aug. 13, 1997, at B1 (describing Abner Louima's allegations of police brutality while he was in the custody of officers at the 70th Precinct). Five New York City police officers have been charged by the U.S. Attorney's Office for the Eastern District of New York for their roles in the alleged assault. Henri E. Cauvin, *Rally for Louima*, DAILY NEWS (New York), Aug. 10, 1998, at 18.

² The Truth and Reconciliation Commission ("TRC") is a "government body that has been delving into human-rights abuses of the apartheid era of racial separation." Dean E. Murphy, *U.S. Reportedly Encouraged Chemical Arms in South Africa*, BUFFALO NEWS, Aug. 1, 1998, at A5. The TRC's efforts were "intended to foster racial harmony by exposing the crimes committed by both whites and blacks during the apartheid era." *Id.* For two and a half years the TRC held "nationwide hearings on human rights abuses during the apartheid era; confessions, accusations and testimonies [that were included in a] comprehensive report." Charlayne Hunter-Gault & Brooke Gladstone, *Weekend Edition: South*

Johannesburg, and were specially designed to address issues of the abuse of women under apartheid.³ The day that I attended the Truth and Reconciliation Commission hearings, I listened to a variety of testimony by women from throughout South Africa, but particularly the area around Johannesburg. One case that was spoken about still stays with me today. It is somewhat horrific but I want to share it with people, because there is a point that I want to make by giving you this story.

This woman talked about having been taken from her home by South African police officers during the height of the apartheid struggle, to a police station where she was held for a considerable amount of time and tortured.⁴ Part of the torture that she was subjected to was being tied down to a table and having rodents inserted into her vaginal area. She spoke about how even today, years after the fact, she still wakes up, with the feeling of the clawing, of their claws inside of her body. It is something that she will never be able to forget. And I remember sitting there and just thinking how horrible it was and as a woman, hardly being able to listen and thinking to myself, "Thank God I'm an American because things like that don't happen there."

I came home a week later and my son came to pick me up at the airport. As we were driving, I asked him what had been going on in the city in my absence. He told me about the Louima case.⁵ This was the Saturday after the case had broken. At this point Mayor Giuliani and the Police Commissioner⁶ had done whatever

Africa's Truth Commission Ended its Hearings on Human Rights Violations This Week (National Public Radio broadcast, Aug. 1, 1998), available in 1998 WL 6285051 [hereinafter NPR].

³ See NPR, *supra* note 2.

⁴ See Patricia Chisholm et al., *Apartheid: Can the Truth Set a Nation Free?*, MACLEAN'S, Apr. 8, 1996, available in 1996 WL 8016224 (describing torture methods used by former South African policeman Paul Erasmus, also known as "Mr. Dirty Tricks"); see also Eric K. Yamamoto, *Race Apologies*, 1 J. GENDER RACE & JUST. 47 (1997) (describing torture in South Africa under the F.W. de Klerk government and subsequent efforts at reconciliation).

⁵ See *supra* note 1 (discussing the Louima case).

⁶ The New York City Police Commissioner at the time of the Louima incident was Howard Safir. THE GREEN BOOK: OFFICIAL DIRECTORY OF THE CITY OF NEW YORK 257 (1996).

it was that they did to take the officers out of the precinct.⁷ They were still in the investigative stage. But I remember listening to his [Louima's] account of what had happened, and being appalled because it just flew in the face of what I believed could and couldn't happen in this country. I said to myself, "I guess I'm not as far away from South Africa as I thought." As the events continued to unfold the thing that struck me most is that torture happened there, regardless of whether or not the specific officers that were accused committed a crime.⁸ We do know that this man [Louima] was tortured in the precinct. He's not the first person to be tortured under police custody and I dare say that he won't be the last.⁹

I think it is important for us to look at what role torture plays. The purpose of torture is to exert power, to demonstrate power over others. I agree with all the other speakers who have spoken today that the majority of the police officers in New York are not brutal and would not even think about engaging in the type of torture that Abner Louima says that he was subjected to. What I do believe is true, what the New York Civil Liberties Union believes is true,¹⁰ and what has been true for the entire time of my life in

⁷ See *City Officials Express Outrage on Police Brutality*, N.Y. BEACON, Aug. 27, 1997, at 5 (describing the filing of a criminal complaint against Officer Justin A. Volpe of the 70th Precinct); *What the Abner Louima Case Says*, N.Y. TIMES, Aug. 26, 1997, at A1 (criticizing the Giuliani administration's efforts to investigate the Abner Louima incident).

⁸ See Kocieniewski, *supra* note 1, at B1 (describing how officers allegedly beat Louima and "shoved the wooden handle of a toilet plunger into his rectum and then into his mouth").

⁹ See Dennis Cauchon, *Badge Shines a Little Less Bright in Brooklyn*, USA TODAY, Aug. 27, 1997, at 4A (describing alleged acts of police violence prior to the Louima incident involving officers of the 70th precinct); Bob Herbert, Editorial, *In America: Connect the Dots*, N.Y. TIMES, Aug. 24, 1997, section 4, at 13 (describing several acts of violence by New York City Police officers and the lack of effort by the Internal Affairs Division of the police department to improve investigations); Bob Herbert, Editorial, *In America: One More Victim*, N.Y. TIMES, Aug. 14, 1997, at A31 (recounting several acts of reported police brutality in New York City prior to the Louima incident).

¹⁰ See New York Civil Liberties Union, *Deflecting Blame* (visited Nov. 8, 1998) <<http://www.nyclu.org/blame1.html>> [hereinafter *Deflecting Blame*] (discussing the failure of Mayor Giuliani's Task Force on Police/Community

living in New York City is that there is a tolerance of police abuse and torture, particularly when it is inflicted upon people of color. It is an important part of this conversation, because I believe that the reason that we have made so little progress is addressing the issue of police abusive violence is that so often the people who are victims of police brutality are people of color or people who are basically considered powerless in the overall scheme of things. I want to suggest that the real solution to finally addressing this problem does not lie totally with the Mayor's Office or the NYPD, with improving police training, with having a residency requirement, or with having a special prosecutor.¹¹ I think all of these are entirely good ideas that need to be implemented. However, I really believe that the ultimate solution to addressing this problem lies with everyone in this room, and everyone else in New York City, who are, in fact, the employers of the New York Police Department.

It's only when we, as citizens and taxpayers, say that we will not tolerate this type of behavior and excuse it as something that occurs in isolated incidents that police violence will end. Until we demonstrate that we are not willing to tolerate police abuses, these types of incidents will continue to occur.

Last night [April 14, 1998], the news had a short story about a police action in Washington Heights, New York, as part of an anti-drug initiative.¹² The report stated that police had cordoned off

Relations to improve perceived lawlessness within the NYPD). Mayor Giuliani formed the Task Force on Police/Community Relations in August 1997 in response to the charges of police brutality against Abner Louima. *Id.* The majority's final report made seventeen recommendations, including the increase of NYPD academy training from six months to one year, and residency requirements for police officers. *Id.* The Task Force refused to recommend the establishment of a permanent special state prosecutor for police corruption and brutality that the Dissent from the Task Force Report believed to be crucial. *Id.*

¹¹ *Id.*

¹² See Paul Schwartzman, *NYPD Takes Back Streets: New In-Your-Face Strategy Has Drug Dealers on the Run*, DAILY NEWS (New York), May 10, 1998, at 20 (describing the Washington Heights crackdown and similar crackdowns in the Bronx and Queens, and the resulting drop in shootings and improvement in quality of life for some area residents, as well as the perception of police harassment by other area residents).

sections of Washington Heights, closed off the streets and engaged in an anti-drug crackdown.¹³ I am sure that the majority of New Yorkers who listened to that report thought, “Gee, that’s a good thing; we have a lot of drugs in Washington Heights.” People thought it was good that the police are engaging in activities to get rid of that problem, but I talked to a lot of people who live in Washington Heights, particularly young people. One of the things they have talked about is what it is like, as residents of Washington Heights, to be subjected periodically to these types of crackdowns, where their streets are cornered off, where everyone who goes in and out of buildings on that street is stopped and questioned, sometimes searched and sometimes detained. For most New Yorkers that is not something they have to experience on a regular basis.

I would like to digress for a moment. One of the things that was interesting about participating in the Mayor’s Task Force¹⁴ was that our community relations liaison was going to the Task Force community meetings. Overwhelmingly, the people who were in attendance were older people—people my age and older. Because I am over forty, the chances of being stopped, detained or harassed by the police are relatively minimal. However, I am also the parent of a twenty-one year-old who is a prime target for police harassment.

For example, one day my son came home after having left for work and I wondered why he was back. He said he had forgotten his driver’s license. I said, “But you don’t drive, you don’t have a car.” He said, “I cannot go to work without my driver’s license because if the police stop me and ask me for my I.D., and I don’t have it, I could end up in the police station tonight.” That is a fact. I realized then how very similar my life—and my relationship with my son as a parent around these issues—is to a relationship of a lot of black mothers in the south in the 1950’s, who had to teach their

¹³ *Id.*

¹⁴ In the wake of the Louima incident, Mayor Giuliani created the Task Force on Police/Community Relations. See Alan Finder, *At The Heart of Report on Police, Some Modest Proposals*, N.Y. TIMES, Mar. 28, 1998, at B2 (discussing the Louima incident and subsequent events).

children how to avoid having negative encounters with white people that could result in violence.

To me, the problem with police violence is not just limited to the incidents like the Abner Louima case or the Tony Baez¹⁵ case, where the cases get a lot of publicity and where, often times, the criminal justice system at least goes into gear to seek correction for it. I believe the real problem of police violence lies in the everyday encounters that minority people have with the police in this city, where they are disrespected and where they are abused verbally.

Violence is not just limited to just physical violence. There's also emotional and psychological violence when you live in a community where you feel that the people who are walking about with badges and guns are not there to protect you, but to protect other people from you. That is a psychological violence situation, when you have young people in a community who believe that they are perceived as criminal purely because of their race, their age and their sex. That is a violent situation, and one that leads to violence.

The point that I want to make in all of this is that I wanted to expand the surroundings of this conversation and not be limited to the kinds of cases that we are used to hearing about. I also wanted to provoke people to think a little bit more about their typical responses to violence and their attitudes about police, because I agree with the prior panelists, particularly, Judge Mollen and Professor Chevigny, who attributed a lot of this to our attitudes about the function of police in our society.¹⁶ Are we using the police as a tool to deal with social problems that we feel incapable to deal with otherwise? If so, then that is the wrong instrument. The police are not trained, not equipped to do that type of job. To

¹⁵ On December 22, 1994, Anthony Baez died during an argument with New York City police officer Francis X. Livoti. Clifford Krauss, *Officer is Indicted in Man's Death During Confrontation in Bronx*, N.Y. TIMES, Mar. 22, 1995, at B2; Jim Dwyer, *Asphyxia, Say Experts: Quiet Nabe,irate Cop & Ugly Death for Baez*, DAILY NEWS (New York), Sept. 17, 1996, at 8 (describing the Baez incident in the context of the criminal trial of Livoti on murder charges in connection with Baez' death. A key point in controversy was whether the "choke hold" that caused Baez' asphyxiation was excessive force by Livoti).

¹⁶ See *supra* comments of Professor Paul Chevigny, p. 86; Hon. Milton Mollen, pp. 100-101 (analyzing the public perception of police violence).

the extent that we are relying on policemen to deal with those types of problems, you do have an awful lot of tension. I would not want to have a full-time job where it was my responsibility to deal with issues of domestic violence, substance abuse, drug selling, and all types of robbery and petty abuse that goes on in poor communities on a day-to-day basis. Then, to have that be the scope of my interaction with people, and to expect to have a good feeling about those people. In fact, the majority of police work is involved with just those types of things.

Those people in the Police Department who commit themselves to having a career actually doing community relations, working the youth counsel, working with the local merchants, et cetera, don't get an award for their work. They do not get to be upper-rank policemen. In fact, they are looked down on by other members of the Police Department.

I want to suggest that if we really want to do something about the issue of police violence, we will start dealing with that whole "Blue Wall of Silence."¹⁷ I think it is terrible that, even as of this date, there have only been two or three officers from the precinct who have come forward to cooperate in the Louima investigation.¹⁸ While working on the Task Force report we had a number of philosophical arguments in the office about what constitutes

¹⁷ "The blue wall of silence is an unwritten loyalty oath among police officers that prohibits a police officer from reporting incriminating information about a fellow officer. Police organizations impose severe consequences on those officers who violate the code." Robin K. Magee, *The Myth of the Good Cop and the Inadequacy of Fourth Amendment Remedies for Black Men: Contrasting Presumptions of Innocence and Guilt*, 23 CAP. U. L. REV. 151, 203 (1994). The "Blue Wall of Silence" is further characterized as "an unwritten code in many departments which prohibits disclosing perjury or other misconduct by fellow officers, or even testifying truthfully if the facts would implicate the conduct of a fellow officer." Gabriel J. Chin & Scott C. Wells, *The "Blue Wall of Silence" as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. PITT. L. REV. 233, 237 (1998). The Mollen Commission also found a strong code of silence in the New York Police Department. *Id.* at 240.

¹⁸ New York City police officers Eric Turetzky and Mark Schofield provided investigators with information on the Louima incident. See Dan Barry, *Officers' Silence Still Thwarting Torture Inquiry*, N.Y. TIMES, Sept. 5, 1997, at A3. Almost one hundred other officers, however, professed to know nothing. *Id.*

police violence. The analogy that I would like to make to illustrate my viewpoint is this: If you are at a lynching, the people who put the rope around the person's neck, who tie it around a tree, who pull it up are clearly guilty of that lynching. But so are the hundred or so other people who are standing around wearing robes and hoods and watching, and who don't come forward after the fact to say who it was that tied the rope around the man's neck. That's the situation that we have here in New York.

We have thousands of officers who have witnessed police misconduct, who have witnessed police violence, but who have been able to absolve themselves of any responsibility and who do not feel compelled to tell what they know.¹⁹ We have public officials who have excused that behavior,²⁰ and who do not see that [act] as having the same level of culpability as the officer who actually used the baton, fired the gun or beat the suspect or the civilian.

I want to suggest that, while our office and our organization has advocated and will continue to advocate the types of changes that Judge Mollen talked about and that we have spoken about in my dissenting report,²¹ we especially need to have a residency requirement. We need to have a police department that is more

¹⁹ See Bob Herbert, *In America: Remaining Blind to Brutality*, N.Y. TIMES, Sept. 25, 1997, at A31. The author states that:

[C]ops who brutalize civilians are for the most part shielded by the department and protected by the rest of the criminal justice system. . . . [B]rutal cops are allowed to operate in what amounts to a moral void, an utterly lawless region in which virtually any kind of violence, even murderous violence, is tolerated. A cop whose record is spotless will watch a colleague beat a civilian nearly to death and then swear under oath that he never saw a thing.

Id.

²⁰ See Bob Herbert, Editorial, *In America: Hear the Blue Wall Crack*, N.Y. TIMES, Aug. 17, 1997, at 6 (stating that "[m]ost cases of brutality are covered up one way or another. Even now the Mayor and the Police commissioner refuse to acknowledge the full extent of the problem. They won't even speak candidly about the so-called blue wall of silence.").

²¹ *Deflecting Blame*, *supra* note 10 (discussing the failure of Mayor Giuliani's Task Force on Police/Community Relations to improve perceived lawlessness with the NYPD).

reflective of the city, and that therefore has a higher number of women, African-Americans, Latinos, Asians—not just as police officers, but in supervisory ranks as well. We also must have more accountability, not just through the Civilian Complaint Review Board,²² but also by having, when necessary, a special prosecutor with extra authority to investigate the very difficult cases of police violence where you have situations like in the Abner Louima precinct, where the majority of officers will not cooperate. This change would restore some accountability on the local level.

We should also have the various police counsel on a local level be in partnership with the police to do monitoring on a regular basis. Many problems could be avoided just by asking local residents their perception of the officers that patrol their community. We continue to advocate all of those things. But I would like to say that I think, most importantly, what is necessary is a change in attitudes on the part of the NYPD, the Mayor and the citizens of New York.

Our elected officials take the positions that they feel that they can take. So, to the extent that there has been little action in this area, it is because we don't have a populace that demands it. One of the reasons that Los Angeles is further ahead in dealing with this issue than New York is because Los Angeles had a major civil disturbance.²³ The residents of Los Angeles said, "We can't afford this, not just because of the cost involved in settling the various court cases involving police violence, but also because we don't

²² See Michelle Boorstein, *Police Review Boards Remain Popular: Number of Civilian Panels Growing, Though Most are Ineffective, Experts Say*, FT. WORTH STAR-TELEGRAM, May 3, 1988, at 19 (recognizing that, in general, civilian review boards do not adequately hold police officers accountable for their actions).

²³ The speaker refers to motorist Rodney King's beating by several Los Angeles police officers, four of whom were tried and acquitted. Richard A. Serrano & Tracy Wilkinson, *All 4 in King Beating Acquitted: Violence Follows Verdicts*, L.A. TIMES, April 30, 1992 at A1; see also Louis Sahagun & Vicki Torres, *Jittery L.A. Sees Rays of Hope: Few Crimes, No Major Fires are Reported*, L.A. TIMES, May 3, 1992, at A1 (noting that in the aftermath of the acquittals of the four police officers, the largest riot in United States history erupted; there were a total of 44 riot-related deaths and a peacekeeping force of more than 6,550 arrested a total of 6,720 over four days).

want to see our city get burnt up around us.” There has not been that commensurate level of outrage and outcry in New York about the continuing cases of police violence that people hear about on a regular basis. We have a march. We have a Task Force, we have a report. We have some recommendations. But, very little has changed.

This has been continuing in this city since 1845.²⁴ We are talking about over 150 years of the same cycle, the same behavior. When the violence first started, it was directed towards Irish and Jewish immigrants. Now it is directed towards Blacks and Latinos. But it is the same mentality. It is the same basic circumstances and it is the same basic causes.

I want to leave you with the thought that you are individually accountable for making sure that the police are accountable. If you want to have a police force that is less violent, that is more user-friendly, that treats every citizen with the type of respect that we believe that they deserve, then you have to take individual responsibility. Because we fear cases like Abner Louima, don't read about it in the paper and say “Tisk, tisk, tisk, that's really terrible,” and then continue to vote for the people that allow these things to happen and who then do not come out and march and do not take action. Because, then, you would just be responsible for allowing that to continue. Thank you.

²⁴ The New York City Police Department was founded in 1845 with 900 initial police officers. New York City Police Department, *Who We Are* (visited Nov. 24, 1998) <<http://www.ci.nyc.us/html/nypd/html/whoweare/html>>.