



The Mollen Commission Report 25 Years Later— Lessons in Police Management

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August 2019

On July 7, 1994, the Mollen Commission publicized its findings related to police corruption in the New York City Police Department. One of the focal points of the Commission's work was depicted in the 2015 documentary *The Seven Five*.^[1] The acts of corruption and brutality committed by the likes of Officers Michael Dowd, Kevin Hembury and Bernard Cawley (nicknamed "the Mechanic" for his habit of "tuning up" suspects) and others spawned a two-year investigation into the "the nature and extent of corruption in the Department," "the Department procedures for preventing and detecting corruption," and concluding with the Commission's best attempt "to recommend changes and improvements in those procedures."^[2]

Like the Knapp Commission before it in New York, and the Christopher Commission in Los Angeles, the Mollen Commission Report was the latest in a lineage of investigations driven by investigators from outside the department in the wake of corruption scandals involving police officers. **It resulted in diagnoses of pitfalls in police management that applied then, and now, well beyond the New York City Police Department. These reports should be studied by law enforcement leaders across the country. The loss of public trust associated with these scandals should serve as cautionary tales that are universally relevant.**

There are so many lessons to be derived from failures of leadership at all levels described in the Mollen Commission Report that a brief article cannot begin to cover it all. But, **writing as an attorney focused on the legal liability and best practices associated with personnel management in law enforcement—from hiring to discipline to termination—it is striking how familiar some of the Commission's key findings sound in 2019.** These lessons go well beyond egregious and unlawful acts of corruption. The findings of the Mollen Commission should be viewed in light of an agency's ability to effectively manage *all* types of officer misconduct and performance issues.

The Hiring Frenzy

What could easily be missed in the lengthy Commission Report may be the most frighteningly applicable to law enforcement in 2019. Agencies across the country are struggling to recruit qualified applicants to serve as law enforcement officers. This presents an opportunity for unqualified men and women to gain employment because agencies need “warm bodies.”

The Mollen Commission Report found that the rising crime of the 1980s led to a striking increase in the rate of hiring new officers that was accompanied by a systemic failure to conduct thorough background checks and hold applicants to standards beyond the stated automatic disqualifiers.[3]

“There is a widespread perception among officers of many ranks that hiring standards have fallen dramatically over the years,” the report stated.[4] **The Commission determined that “approximately 20 percent of the officers suspended or dismissed should never have been admitted into the Department. This is based merely on information available in these officers’ personnel files at the time of hiring.”**[5] In other words, 20 percent were deemed unfit based not on what should have been found through the due diligence of a thorough background investigation, but only based on obvious the red flags that made their way into the personnel files and were apparently ignored.

A particularly disturbing example of lackluster background investigation procedures is found in the Commission finding “that the Department has routinely admitted applicants to the Department—and put them on the streets as sworn officers with guns and shields—before their background checks are complete. Eighty-eight percent of the officers in our study, for example, entered the Police Academy before the completion of their background.”[6]

Furthermore, the Commission found that often times background investigations were not completed “until after the applicant becomes a sworn police officer...”This is particularly troublesome because by the time recruits have graduated from the Police Academy and become sworn members of the Department, much time, energy and money has been invested in them. Consequently, the focus...shifts from the question of whether the applicant is qualified...to how the Department could justify dismissing a sworn police officers which carries a heavier burden of proof.”[7]

This idea of working hard to find a reason to keep someone should sound familiar to law enforcement professionals across the country in a time when hiring frenzies are the national norm. How much unnecessary and painfully predictable risk is taken when backgrounds are rushed, steps are skipped, and it is all rationalized by the idea that *if there’s a real problem they’ll catch it in the academy or they’ll catch it in field training?*

The Mollen Commission Report echoes what agency leaders are learning and re-learning across the country: when people show you who they are, believe them and act as soon as possible to remove them from the hiring process.

The critical issue is not just one of liability management, but of leadership. Are agency leaders willing to take the time and utilize the resources necessary to conduct adequate background investigations in spite of

the pressure to hire anyone who is not automatically disqualified? Meeting this obligation requires a conscious acknowledgement that the integrity of any law enforcement agency is dependent upon the character of the men and women chosen to serve and protect.

Utilizing the Probationary Process as a Unique Vetting Opportunity

The Commission echoed a key conclusion reached by its 1970s predecessor (the Knapp Commission) when it noted, “[A]s the Knapp Commission recognized a generation ago, often the most reliable predictors of an officer’s performance first appear in recruit training and during the eighteen-month probationary period.”[8] And yet the commission report found that in the years leading up to the creation of the Commission, “probationary officers are seldom dismissed.”[9]

The probationary employment period presents law enforcement leaders with a unique opportunity to evaluate performance, identify “red flags” and take proactive measures to address misconduct. For most officers, the close supervision and continual feedback that they receive from their Field Training Officers (FTOs) during this period will not be replicated for the entirety of their career. **If, during this period, FTOs find probationary officers to demonstrate fundamental character deficiencies, there is no better time to have the difficult but critical conversation concerning whether the officer is salvageable.**

While it is certainly normal for probationary officers to make mistakes, there is often a clear distinction between understandable mental mistakes, versus performance issues that reflect on core character issues such as honesty, willingness to accept responsibility for errors, and ability to receive corrective feedback.

There is no good time for agency leaders and front-line supervisors to determine the severity of performance issues with the possibility of termination on the table. But, from a legal liability and risk management standpoint, there is no better time than during the probationary process—prior to an officer’s status shifting from probationary to permanent, with all of the arbitration, appeals and/or due process rights that come with this change in employment status.

Agencies across the country often realize too late that the chance to streamline the evaluation and possible termination of the few bad apples inside the department has come and gone only after the probationary process has ended and a problem officer’s status has gone from probationary to permanent status.

“Copy and Paste” Performance Evaluations

The Commission found that, beyond failing to aggressively pursue indications of corruption among their subordinates, supervisors in the New York City Police Department were not accurately evaluating the performance of those officers they supervised more generally. “[M]any [supervisors] have even abandoned their responsibility to evaluate officers in their command—and to flag ‘problem’

officers...supervisors admitted that performance evaluations were typically boilerplate...performance evaluations often covered suspected corruption problems.”[10]

Even Michael Dowd, the focus of *The Seven Five* documentary, managed to receive “meets standards” evaluations. “Dowd, like many other openly corrupt officers with whom we spoke, reported that this lack of strong supervision and many supervisors’ apparent willful blindness made him believe that he could ‘do just about anything and get away with it.’”[11]

Why are we conducting performance evaluations and how are they making the agency better? These are fundamental questions for agencies that require standardized performance evaluations. Without clearly answering these questions, supervisors are often put in the position of pursuing the “path of least resistance” when it comes to conducting performance evaluations. **This path is understandably tempting for supervisors, but it often results in serious agency problems relating to legal liability in discipline and promotions—not to mention officer morale.**

When problem officers are given positive performance evaluations as standard operating procedure, personnel decisions become much more difficult to defend in court or in arbitration. The “copy and paste” evaluations essentially become “get out of jail free cards” that serve to insulate officers from negative employment actions that can withstand scrutiny in arbitration or in court. Too often and to the great detriment of the profession, the only time that these individuals’ *real* performance issues are openly discussed is when criminal charges are involved, as we see in the characters portrayed in the Mollen Commission Report.

25 Years Later—What Have We Learned in Personnel Management?

It seems clear to reasonable observers that the law enforcement profession in the United States has continued to improve in professionalism and transparency over the last 25 years, as has generally been the case throughout the history American policing. However, with regard to the fundamental pitfalls of (1) hiring frenzies, (2) the failure to utilize the probationary period as a vetting opportunity and (3) the “copy and paste” performance evaluations that are all too common throughout the profession, the Mollen Commission Report seems extremely relevant.

The Mollen Commission Report serves as an important reminder that the fundamental challenges facing law enforcement agencies are not new. When it comes to personnel management, identifying the points of failure within police organizations is simple—although correcting course is not necessarily easy.

We have case studies that answer questions like, *What happens when we throw warm bodies into police uniforms for the sake of getting our numbers up at any cost? What happens if we don’t believe people when they show us who they are in the probationary period? What happens if we have ineffective performance evaluations that boil down to checking a box?*

The answers are fairly clear. *What happens? Nothing good.*

About the Author

Matt Dolan is a licensed attorney who specializes in training and advising public safety agencies in matters of legal liability. His training focuses on helping agency leaders create sound policies and procedures as a proactive means of minimizing their exposure to costly liability. A member of a law enforcement family dating back three generations, he serves as both Director and Public Safety Instructor with Dolan Consulting Group.

His training courses include [*Recruiting and Hiring for Law Enforcement*](#), [*Confronting the Toxic Officer*](#), [*Performance Evaluations for Public Safety*](#), [*Making Discipline Stick®*](#), and [*Supervisor Liability for Public Safety*](#).

[1] Holzman, E. (Producer), & Russell, T. (2015). *The Seven Five* [Motion Picture]. United States, Sony Pictures.

[2] City of New York (1994). *Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department: Commission Report*. New York, NY: City of New York; p. 1.

[3] Mollen Commission Report, p.65

[4] Mollen Commission Report, p.111

[5] Mollen Commission Report, p. 111

[6] Mollen Commission Report, p. 112

[7] Mollen Commission Report, p. 113

[8] Mollen Commission Report, p. 117

[9] Mollen Commission Report, p. 117

[10] Mollen Commission Report, p.80.

[11] Mollen Commission Report, p.81.