

Commission on Law Enforcement Accountability

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In order to give context to my statement, it is important for the Commission to know my history and experience. I started out as a lawyer in 1974 as a public defender in the Bronx. After that, I was hired to the full-time faculty of Benjamin Cardozo Law School in NY. I remained there until 1994 when I came to NH as Deputy Director of the NH Public Defender. While in NY, in addition to my responsibilities at the Law School, I began practicing civil rights, police misconduct litigation.

After leaving the Public Defender, I had as a significant part of my caseload civil rights litigation. It remains much of what I do today. Now, the scope of my civil rights practice is nationwide, although most of my cases are in New Hampshire.

Despite, the nature of my practice, I am an active supporter of law enforcement. In addition to my civil rights and criminal defense practice, a significant amount of my practice has been and will be representing police officers and other first responders in employment cases. I strongly believe that the overwhelming majority of police officers do their job well. Nonetheless, here in New Hampshire I believe that there are issues that must be addressed. Since I have been doing police misconduct litigation for many years, I receive many inquiries from New Hampshire citizens who have had encounters with the police that they believe warrant a civil lawsuit. An overwhelming percentage of those inquiries regard a small handful of police departments. That minority, however, poisons the well.

I believe that the best way for me to help educate the Commission is to discuss some specific cases highlighting specific issues. First, I will discuss what I think is the biggest problem that we have both here in New Hampshire and the rest of the country. There is tremendous pressure on police officers to, remain silent about the small minority of police officers that engage in misconduct.

Here is an example. One of the first civil rights cases I handled in New Hampshire involved a police department on the Massachusetts border. My client had a very, very long history of domestic abuse. He legally

was not supposed to be in the vicinity of his former woman friend. The police found out he was there and attempted to speak to him and arrest him. He fled.

He was chased by a number of officers including a K-9 officer and his dog. At the time of his arrest my client suffered a serious injury, a fractured orbit. He alleged that he was struck in the face a number of times by one of the officers.

Two or three officers laid out a similar narrative in their police report. They claimed that during the chase, my client had tripped, fallen and hit his face. What those officers did not anticipate, however, was that the K-9 officer was going to tell the truth. To his credit, that officer wrote that because of his “fear for the safety” of his German Shepard dog, he “struck the perpetrator 3 times in the face with his closed fist.” The practice of police officers to cover up illegal conduct by fellow officers is so pervasive, that in that case they seemingly did not even bother to speak to the canine officer to get their stories straight. Without changing that practice, it will be nigh impossible to ever have a system that holds law enforcement responsible for their misdeeds.

The second issue I will discuss is the unfortunate, judicially-created law regarding police accountability in New Hampshire. This case, Everitt v. Town of Hooksett, makes it impossible to sue police officers for their conduct under state law. In New Hampshire, police officers have immunity for both negligent and intentional torts committed against our citizens. I will give you an example.

I was contacted years ago by a psychiatrist. He told me that he had some concerns about a patient of his who the doctor thought might have taken pills to attempt suicide. The psychiatrist called the police department involved and spoke to the dispatcher. He was assured that someone would be sent to his patient to do a wellness check.

The psychiatrist did not hear again from his patient, and when he followed up he was told that his patient did not appear at his employment the next day. The doctor once again called the police department and two different officers were sent to the patient’s home. With the help of the building superintendent, they gained entry into the patient’s apartment where they found him dead of an apparent overdose suicide.

As the police reports indicated, the officer that went to the apartment the first day knocked on the apartment door and there was no response. That officer did absolutely nothing to check further. The New Hampshire Medical Examiner opined that if that first officer had entered the apartment, more likely than not the patient’s life could have been saved.

Unfortunately, the conduct of that first officer was negligent, lazy, and foolish. How did he ever expect a person who had taken an overdoes of medication to respond to his knock on the door. There was little basis for a

federal constitutional claim against the officer. And, unfortunately, an officer cannot be sued in New Hampshire for negligence and the suit against him was dismissed. That must change.

The third issue I will address is the lack of any workable system today to hold bad police behavior accountable. The Kroll audit of the Salem Police Department shows how a department's procedures can allow that department to internally bury any complaints. Additionally, the supposed oversight of police misconduct by the Attorney General's office is totally ineffective.

A number of years ago I represented the family of a young man that was fleeing from the police after a botched drug sting. He was shot and killed. The State investigates any incidents that are euphemistically called "police involved shootings." First, what most people do not recognize is that the investigation is a criminal one. A report is not issued setting forth whether or not the police officer acted appropriately. The report is issued to determine whether the officer should be charged criminally.

The officer involved in this shooting claimed self-defense. The investigatory report indicated that the officer in question gave 3 different versions of the incident and **none constituted self-defense**. The report concluded, however, that there would be no criminal prosecution because no determination could be made of what actually occurred.

Think about this. The Assistant Attorney General stated that none of the officer's explanations supported his claim of self-defense. Nonetheless, the report indicated that no criminal prosecution would ensue.

I have been practicing criminal defense law for over 45 years and not one of my clients got the same consideration that officer received. Here, a police officer shot and killed a citizen. His explanations did not support his claim of self-defense, yet the inquiry ended there.

My final example highlighting a problem has to do with police encounters with the mentally ill. The overwhelming majority of police misconduct cases that I have handled, both here and outside of New Hampshire, did not start out with any alleged criminal behavior. They started out with a call for help. Oftentimes, a call to 911 about a family member being physically or mentally in distress. The unfortunate reality is that in many of these encounters, instead of someone receiving the help they need, the result is injury or death.

In one case I handled, family members called the police because another family member had brandished a small kitchen knife and was obviously in the midst of a severe psychotic episode. The police responded and instead of trying to deal with a disabled individual with significant mental health issues, the police dealt with the situation as a purely criminal situation. It was not surprising, therefore, that the result was that a person who needed help ended up shot and killed by the police. Unfortunately, this issue is endemic in our country. I have

handled similar issues outside of New Hampshire. In large part, situations such as the one I described are the impetus of the misunderstood “defund the police” movement.

There are other issues regarding police accountability that I think this Commission should address. Others will no doubt address them. I believe, however, that the issues I have articulated must be part of the conversation. If the Commission has any questions, feel free to contact me and thank you for allowing me to submit my thoughts and testifying before the Commission.

Very truly yours,

A handwritten signature in black ink, appearing to be 'L. Vogelmann', written over a light blue horizontal line.

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