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## **Retaliatory Personnel Action Part Two – Reporting Coworkers**

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► **AELE has written a specimen Policy prohibiting retaliation.**  
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### ❖ **Introduction**

[Part One](#) addressed various statutory remedies for retaliation. This issue focuses on retaliation for reporting one's coworkers.

Law enforcement and correctional agencies require employees to report possible crimes and noncriminal misconduct committed by their superiors, their partners, associates and subordinates. The failure to do so can result in termination for keeping silent.

Some agencies have had a reputation for punishing officers who reported corrupt practices. A prominent example is the NYPD. The Knapp Commission (1970-72) and the [Mollen Commission](#) (1992-94) labeled minor corrupt officers as “grass eaters” and aggressively

corrupt officers as “meat eaters.” Those who reported corruption were labeled “rats” and might find themselves without backup during life-threatening circumstances.

The cases that follow illuminate the problem, and demonstrate the civil liability that can attach for retaliatory conduct. A representative case is examined for each of four categories: corruption, a rule violation, the arrest of another officer and the use of excessive force.

## ❖ Corruption

### • *Paula White-Ruiz, New York*

While a probationary NYPD officer, Paula White-Ruiz was instructed that she should report instances of misconduct by her fellow officers. Internal Affairs instructors also informed recruits that if they reported corruption by other officers, their communications would be treated confidentially.

After the academy, she was assigned to work with an officer in the 66th precinct in Brooklyn. During the course of their duties, they looked after the body of a deceased man in an apartment. She suspected that her patrol partner had appropriated money found in the dead man’s pockets.

She reported her observations to her supervising officer. That report led to interrogations of her partner, who was subsequently dismissed.

Within a day after reporting the incident, an account of the event had been sent on the NYPD’s internal teletype system. The report identified her as the source of information that had led to the investigation of her partner.

Fellow officers at the 66th precinct immediately began to shun her and someone slashed her car tires. She accepted a transfer to a new precinct. Upon her arrival she encountered evidence of hostility to her from some of her fellow officers and superiors. She found the words “Black Bitch” scrawled on her locker, and one or more officers told her that they had been aware of her impending arrival, apparently through a departmental grapevine that had identified her as a “rat.”

On a number of occasions while on patrol, she tried to radio headquarters but was prevented from doing so by the deliberate interference of one or more fellow officers. This was accomplished by the officers “keying down” on their own microphones at the same time and on the same frequencies, thus frustrating her ability to communicate. She was called a “rat” and a “cheese-eater.”

One evening she approached an automobile containing several males who appeared to be

potentially dangerous. She requested assistance from fellow officers, but all of the officers reached by radio declined to come to her assistance, thus subjecting her to danger from the vehicle's occupants.

She complained of a "pariah status" within the NYPD for many years. However, the NYPD's Office of Equal Employment Opportunity allegedly rebuffed her, on the asserted basis that retaliation for whistle-blowing was not within the jurisdiction of the OEEEO, and that she should complain to the very precinct command hierarchy that was tolerating the retaliatory conduct. She then challenged her treatment by filing suit in federal court.

The judge noted that the 1994 [Mollen Commission Report](#) documented a pattern of police corruption. Essential to its maintenance was a code of silence, "under which even honest officers were expected to protect corrupt colleagues from detection and punishment." The Commission found that the NYPD's culture encouraged corruption and thwarted efforts to control it:

"Officers who report misconduct are ostracized and harassed; become targets of complaints and even physical threats; and are made to fear that they will be left alone on the streets in a time of crisis. This draconian enforcement of the code of silence fuels corruption because it makes corrupt cops feel protected and invulnerable." Mollen Cmsn. p. 53.

The judge wrote that "from the outset of plaintiff's tenure at the precinct, she was made to feel an outcast, shunned by many of her fellow officers and plainly not supported by her precinct commander. In microcosm, this series of events reproduces the pattern identified six years later by the Mollen Commission."

He found that the record established "an unwritten department policy ... that sanctioned a "custom or usage" by lower level officials and officers (1) to discourage reporting of corrupt acts by police officers and (2) to retaliate against officers who did bring such misconduct to the attention of Department authorities."

He concluded that he was well satisfied that the plaintiff met her burden to establish that the demonstrated violations of her rights were the product of a department policy or custom. The City was therefore liable for those violations.

The court awarded her \$90,000 for emotional distress [\$120,950 in 2009 dollars], plus attorney's fees. [White-Ruiz v. City of New York](#), #93 Civ. 7233, 983 F.Supp. 365 (S.D.N.Y. 1997).

- *Note to instructors: The White-Ruiz case is well-suited for a case study by criminal justice students.*

## ❖ Rule violation

- *Bruce Barron, Massachusetts*

A former corrections officer in Boston's House of Correction claimed that he was harassed and forced to quit his job after he broke a code of silence by reporting a fellow officer's misconduct. He had reported a coworker for playing cards with an inmate. The offending officer received a short suspension.

After the incident, other corrections officers shunned the plaintiff at roll call and referred to him as a "rat." They displayed posters mocking him throughout the facility. One poster accused him of being a child molester. He also received harassing phone calls at work, his car was defaced with fecal matter, and his tires were slashed.

He complained about the harassment to his supervisors and the Sheriff's Investigative Division more than 30 times, and submitted eight written complaints to SID. In response, a deputy superintendent told a coworker to leave the plaintiff alone but did not impose any punishment. Eventually the plaintiff collapsed from the stress of the harassment and later resigned.

He sued a corrections officer, the Sheriff's Department and the Sheriff for civil rights violations

The district court awarded summary judgment for the Sheriff on the grounds of qualified immunity but denied summary judgment for the department. Following a four-day trial, the jury returned a verdict against the department and awarded the plaintiff \$500,000 in damages. His §1983 suit was premised on the First Amendment and interference with a contractual relationship. The county appealed.

A three-judge appellate panel affirmed, noting that the record demonstrated "a pattern of ongoing harassment that the jury could have found high-ranking department officials were aware of and did not stop." They added, quoting the lower court:

"It is essential that corrections officers be able to speak out freely about misconduct without the pressure of a 'code of silence' and fear of extreme retaliatory harassment sufficient to force resignation."

The panel also noted that the Superintendent, who was third in command, had testified during the trial, and confirmed the existence of a code of silence:

Q: Are you aware of any code of silence between fellow officers reporting violations on each other?

A: Yes.

Q: What is it, the code of silence?

A: Lack of reporting to protect each other.

Q: When Officer Baron reported Sergeant C\_\_, did he violate that?

A: Yes.

[Baron v. Suffolk County Sheriff's Dept.](#), #03-2718, 2005 U.S. App. Lexis 4964, 403 F.3d 225 (1st Cir. 2005).

#### ❖ **Arrest of another officer**

##### • *Michael Heim, Texas*

A police officer assigned to a DWI task force arrested an off-duty sergeant for drunk driving. Shortly afterwards, the IA subjected him to a series of disciplinary actions for various activities deemed inconsistent with departmental policies.

He sued alleging the discipline was for violating the department's "unwritten code of professional courtesy." The jury agreed; he was awarded compensatory damages of \$594,000 [\$815,000 in 2009 dollars], as follows:

1. \$15,000 for loss of past earning capacity;
2. \$40,000 for loss of future earning capacity;
3. \$35,000 for loss of retirement and other employee benefits;
4. \$250,000 for past mental anguish;
5. \$250,000 for future mental anguish; and
6. \$4,000 for arbitration and out-of-pocket expenses plus pre-judgment and post-judgment interest.

The jury also awarded a whopping \$500,000 in punitive relief [\$686,000 in 2009 dollars].

A three-judge appellate panel affirmed, noting that:

1. He had been labeled by his coworkers as a troublemaker;
2. He had received threats;
3. He feared others might not give him adequate backup
4. He worried that contraband would be planted in his car;
5. His career advancement path had ended.

[San Antonio v. Heim](#), 932 S.W.2d 287 (3rd Dist. 1996).

- *“The only thing worse than having a bunch of crooks after you if you are a policeman is having a bunch of cops after you, in my opinion, because they have the means and the methods and the ways to get back at you.” – Michael Heim*

## ❖ Excessive force

### • *Corrente and Burke, Rhode Island*

Two state prison officers witnessed fellow officers assault an inmate, and they reported the incident to their superiors. After this, the union and some of its members allegedly engaged in retaliation for breaking an “unwritten rule of not reporting on brother officers.”

The received mousetraps in their mailboxes with notes saying that that’s what would happen to them as “rats.” Because the mail was interdepartmental, it presumably was sent by union members.

Although they complained to their superiors, “no action was taken to investigate and/or take disciplinary action.”

They filed suit against management officials, the Brotherhood of Correctional Officers and various individuals. Although the judge dismissed the suit against the Governor and five other defendants, he found that the plaintiffs’ complaint stated a cause of action under Section 1983 against the Director, the Brotherhood, and six named defendants.

As for the union, the judge noted that “one need not be an officer of the state to act under color of state law.” The complaint alleged that the Brotherhood not only knew of the alleged harassment, but actively promoted it by several methods.

[Corrente v. Rhode Island Dept. of Corrections](#), #90-0524, 759 F.Supp. 73 (D.R.I.)

## ❖ References and resources: *(chronological)*

### ***Books:***

2005. The New World of Police Accountability, by S. Walker. SAGE Publications, Inc., ISBN 9781412909440. [Description](#).

2002. Police Corruption, by Tamara L. Roleff (editor). Greenhaven Press, ISBN-13: 9780737711714. [Description](#).

1976. A Functional Approach to Police Corruption, by Dorothy Bracey, John Jay Press.

1973. A Typology of Police Corruption, by J. Roebuck & T. Barker, Charles C. Thomas.

### ***Reports:***

Annual Reports, N.Y. [City Commission to Combat Police Corruption](#).

2001. [NYPD's Non-IAB Proactive Integrity Programs](#).

1994. [Report of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Dept., City of New York](#) [*Mollen Commission*].

1972. Final Report of the Commission to Investigate Alleged Police Corruption [*Knapp Commission*]. LCCN: 73076969; ISBN 10: 080760688X, 0807606898.

### ***Academic and legal articles:***

2008. [Civilianising the “Blue Code”?](#) An examination of attitudes to misconduct in the “police extended family,” M. Sc. dissertation by Barry John Wright, Univ. of Portsmouth, U.K.

2006. Ethical Climate Theory, Whistle-blowing, and the Code of Silence in Police Agencies in the State of Georgia, by G. Rothwell & N. Baldwin, 70 (4) *Journal of Business Ethics* 341-361. [Abstract](#).

2005. Police Ethics and Integrity: Breaking the Blue Code of Silence, by Louise Westmarland, 15 (2) *Policing and Society* 145–165. [Abstract](#).

2003. Criminology: To Serve and Collect: Measuring Police Corruption, by Sanja Kutnjak Ivkovic, 93 *J. Crim. L. & Criminology* 593.

2003. [New Challenges for Law Enforcement Professional Standards Officers](#), by W. Schmidt, 3 (2) *Law Enf. Executive Forum* 1.

2001. Truth About Police Code of Silence Revealed, by N. Trautman, *Law & Order* (Jan.) 68-76.

2001. An Independent Analysis of the Los Angeles Police Dept's Board of Inquiry Report on the Rampart Scandal, by E. Chemerinsky, 34 (2) *Loyola of L.A. L. Rev.* 545-656.

2002. Corruption and the Blue Code of Silence, by Jerome Skolnick, 3 (1) *Police Practice and Research* 7–19. [Abstract](#).

2000. The Failure to Breach the Blue Wall of Silence: The Circling of the Wagons to Protect Police Perjury, by J. Koepke, 39 *Washburn L.J.* 211.

2000. Breaking the Code of Silence: Rediscovering “Custom” in Section 1983 Municipal Liability, by M. Gilles, 80 *Boston Univ. L. Rev.* 17.

2000. Section 1983 Custom Claims and the Code of Silence, by M. Gilles, 16 *Touro L. Rev.* 853.

1999. Good Cop, Bad Cop: Using Cognitive Dissonance Theory to Reduce Police Lying, by Andrew J. McClurg, 32 *U.C. Davis L. Rev.* 389.

1999. Review of NYC Police Corruption Investigation Commission, 1894-1994, 21

Western New Eng. L. Rev. 233.

1998. The “Blue Wall of Silence” as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury, by G. Chin & S. Wells, 59 Univ. Pitt. L. Rev. 233.

1998. [Ensuring Officer Integrity and Accountability](#), by Daniel Schofield, 67 (8) FBI Law Enf. Bull.

1997. Deceit, Pretext, and Trickery: Investigate Lies by the Police, by C. Slobogin, 76 Ore. L. Rev. 775.

1996. Code of Silence: Police Shootings and the Right to Remain Silent, by R. Myers, 26 Golden Gate Univ. L. Rev 497.

1988. Public Perception of Petty Corruption in Law Enforcement, by R. Sigler & T. Dees, 16 J. Police Sci. & Admin. 14.

1988. The Touchables: Vice and Police Corruption in the 1980s, by John Dombrink, 51 Law & Contemp. Probs. 201.

1975. The Psychology of Police Corruption: Socialization of the Corrupt, by Charles Bahn, 48 Police Journal 30.

1975. The Organizational and Social Setting of Police Corruption, by Gordon Misner, 48 Police Journal 45.

1974. Investigation and Prosecution of Police Corruption, by H. Beigel, 65 (2) Journal of Criminal Law and Criminology 135-156. [Abstract](#).

***Training documents:***

2001. IACP Training Key #531, Investigation of Public Complaints - Part-III: The Investigation Process.

1998. IACP Training Key #503, Standards of Police Conduct - Part I.

1998. IACP Training Key #504, Standards of Police Conduct - Part II.

1981. IACP Training Key #299, The Disciplinary Process: Internal Affairs Role.

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