



**A Report to Mayor Michael R. Bloomberg and  
to New York City Fire Department Commissioner Nicholas Scoppetta**

**The Department of Investigation's Examination of Allegations of  
Sexual Misconduct at FDNY Engine Company 75/  
Ladder Company 33/ Battalion 19 in the Bronx**

**Submitted by DOI Commissioner Rose Gill Hearn**

**February 2005**

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## **INTRODUCTION**

At 6:51 on the morning of August 20, 2004, the Complainant, a resident of Staten Island, called 911 and alleged she was “raped” by firefighters inside a New York City Fire Department (“FDNY”) firehouse in the Bronx earlier that morning. The firehouse, located at 2175 Walton Avenue, Bronx, N.Y., and nicknamed the “Animal House,” is the quarters of Engine Company 75 (“Engine 75”), Ladder Company 33 (“Ladder 33”), and Battalion 19. (Hereinafter, collectively referred to as “the Firehouse”).

The New York City Police Department (“NYPD”), an FDNY Emergency Medical Services (“EMS”) supervisor and a St. Vincent’s Hospital (Staten Island) ambulance responded to the Complainant’s 911 call. FDNY also notified the New York City Department of Investigation (“DOI”). Along with the NYPD, DOI responded by going to interview the Complainant, among others on Staten Island, and to the Firehouse.

This report summarizes DOI’s findings to date. It concludes that on August 20, 2004, Firefighters Tony DeLuca, Anthony Loscuito and former Firefighter Christian Waugh engaged in inappropriate sexual activity with the Complainant inside the Firehouse, and sought to conceal those actions in the hours that followed.<sup>1</sup> Moreover, DeLuca and Loscuito lied under oath about the events of that night, although DeLuca returned and gave testimony correcting the record. By doing so, those members violated FDNY regulations and compromised the security of the Firehouse by:

- allowing a civilian into the Firehouse, in violation of FDNY regulations;
- failing to perform their assigned duties on housewatch;
- engaging in conduct that was to bring disrepute on the FDNY;
- using a computer in violation of the FDNY acceptable use policy; and
- failing to cooperate with DOI’s investigation.

The following report includes an overview of relevant FDNY regulations, biographies of the FDNY personnel and others involved in the incident, a description of the Firehouse and its operations, and a chronological account of the events of that evening. DOI interviewed the Complainant and the FDNY members on duty during the evening tour of August 19-20, 2004. Every FDNY member (with the exception of former Firefighter Christian Waugh) gave an account as to what he had witnessed that evening. The information in this report is based on those and other interviews, FDNY records and other documentary evidence, and a physical inspection of the Firehouse – all obtained in conjunction with this investigation. The following disciplinary interim actions have occurred:

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<sup>1</sup> The incident described herein, including the role of DeLuca, Waugh and Loscuito, has already been the subject of extensive news coverage. One paper publicly identified the Complainant by name and another paper featured her photograph with her face blocked out. Moreover, on August 20, 2004, a call was placed from the Complainant’s cellphone to the Staten Island Advance (see page 17). In November 2004, she filed a Notice of Claim, a public document, with the Comptroller’s Office against the City.

- **Firefighter Tony DeLuca** was suspended for 30 days and is currently on a paid administrative assignment at the FDNY, pending further disciplinary action. While Firefighter DeLuca initially lied to DOI investigators and denied having any physical contact with the Complainant on August 20, 2004, he later returned to DOI and recanted his false statements. He admitted under oath that he had had a sexual encounter with the Complainant in the Firehouse on August 20, 2004.
- **FF Christian Waugh** was terminated from the FDNY. Waugh refused to testify at DOI on August 25, 2004. Subsequently, he was twice offered immunity for his full testimony and repeatedly refused to cooperate with DOI. As a consequence, after a due process hearing before the Office of Administrative Trials and Hearings (“OATH”), he was terminated from his employment with the FDNY on December 3, 2004.
- **FF Anthony Loscuito** was suspended for 30 days and is currently on a paid administrative assignment at FDNY, pending further disciplinary action. Firefighter Anthony Loscuito made false statements under oath during his testimony at DOI and his case was referred to the Manhattan District Attorney’s Office for possible prosecution.

DOI’s investigation is ongoing and is being conducted in conjunction with the Manhattan District Attorney’s Office. This Report is being issued solely by DOI and does not contain all information collected in connection with this matter.

## **BACKGROUND**

### **Fire Department Regulations**

The Charter of the City of New York confers upon the Fire Commissioner the authority and power to govern the conduct of members of the FDNY.<sup>2</sup> By virtue of this authority and in the exercise of these powers, the Fire Commissioner has issued “Regulations for the Uniformed Force” (hereinafter “Regulations”).<sup>3</sup> Every uniformed member of the FDNY, upon joining the Department, takes an oath of office. This oath provides in part that the firefighter, having been appointed to the FDNY, swears that he or she “will faithfully discharge the duties of a member of the Fire Department of the City of New York, according to the Laws, Regulations and Orders governing the Department.”<sup>4</sup>

All members of the FDNY are required to comply with the Regulations, and a copy is issued to every uniformed member of the FDNY.

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<sup>2</sup> New York City Charter §§ 487, 488, and 491.

<sup>3</sup> The Oath of Office and select Regulations are attached separately as Exhibit 1.

<sup>4</sup> See Exhibit 1.

The Regulations cover virtually every aspect of the FDNY's operation: the organization of uniformed forces;<sup>5</sup> the duties of its chiefs and company officers;<sup>6</sup> the conduct of fire and emergency operations;<sup>7</sup> fire prevention and investigation activities;<sup>8</sup> operation and maintenance of apparatus, equipment and company quarters;<sup>9</sup> administration and personnel;<sup>10</sup> as well as the general deportment of uniformed personnel.<sup>11</sup>

By its regulations, FDNY seeks to create a disciplined uniformed force, which instills confidence in the public of its professional and upright character. Accordingly, FDNY officers are required to be dignified and firm in effecting discipline.<sup>12</sup> Uniformed members must:

in matters of general conduct, be governed by rules of good behavior observed by law-abiding, self respecting citizens. They shall conduct themselves at all times in a manner which will not bring reproach or reflect discredit upon the department.<sup>13</sup>

Specific department regulations bar uniformed members from drinking alcohol in uniform or while on duty,<sup>14</sup> forbid smoking in public while in uniform,<sup>15</sup> and prohibit sexual harassment (either by direct harassment or by creating a hostile work environment).<sup>16</sup> Accordingly, offensive materials, such as pictures of a sexual nature or which depict women in an offensive fashion are prohibited in quarters.<sup>17</sup> Members of the force may not leave quarters while on duty without permission of an officer<sup>18</sup> and must always be honest and accurate when making entries into company books, journals, statements and reports.<sup>19</sup>

As noted above, in order to further ensure discipline, as well as safety and security, the FDNY closely regulates the use and operation of fire company quarters.

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<sup>5</sup> Regulations Chapter 1

<sup>6</sup> Regulations Chapters 3, 4, 5, 6, 7

<sup>7</sup> Regulations Chapter 11

<sup>8</sup> Regulations Chapters 8 and 12

<sup>9</sup> Regulations Chapters 13, 19, 20.

<sup>10</sup> Regulations Chapters 15-18.

<sup>11</sup> Regulations Chapters 25.

<sup>12</sup> Regulations Chapter 25.1.2

<sup>13</sup> Regulations Chapter 25.1.3. The image of the uniformed force in the public's eyes is so important to FDNY that its uniformed members must, when necessary, give up their seats on the subway. According to the Regulations, "Members in uniform shall not occupy a seat to the exclusion of other passengers, when using public transportation." Regulations Chapter 25.1.7

<sup>14</sup> Regulations Chapter 25.1.5

<sup>15</sup> Regulations Chapter 25.1.8

<sup>16</sup> Regulations Chapter 25.1.10. *See also* Regulations 19.2.2

<sup>17</sup> Regulations Chapter 19.2.2. Chiefs and company officers are strictly responsible for insuring compliance with this section. Regulations Chapter 19.2.2

<sup>18</sup> Regulations Chapter 25.1.11

<sup>19</sup> Regulations Chapter 25.1.12

Every firehouse around the City has a “housewatch.” Typically, the housewatch area is located strategically in the firehouse so that the FDNY member assigned to “housewatch duty” will be able to observe anyone who enters or leaves the firehouse.

The company commander is responsible for scheduling housewatch duty and must assure that an FDNY member is assigned to housewatch at all times.<sup>20</sup> The FDNY member assigned to housewatch must “remain at the housewatch desk at all times, except when necessary to observe conditions in front of the firehouse.”<sup>21</sup> If relief is required, the member must notify the officer on duty.<sup>22</sup> Housewatch duty is divided into eight 3-hour periods beginning at 9:00 a.m.,<sup>23</sup> and the officer on duty must properly supervise the member performing housewatch.<sup>24</sup> The member on housewatch receives and acknowledges all alarms, promptly sounds the internal alarm bell, informs the officer on duty and assists in preparation for the response.<sup>25</sup> Members on housewatch duty must also maintain the Company Journal, in which all the activities of the firehouse, such as fire alarms and roll call, are recorded.<sup>26</sup> Members on housewatch must also: record “all matters which may affect the efficient response or operations of the unit at fires;”<sup>27</sup> monitor conditions in apparatus quarters and protect the apparatus;<sup>28</sup> and ensure the sidewalk (or “apron”) and fire zone in front of quarters are clear of obstructions.<sup>29</sup> Members on housewatch are also required to answer all telephone calls promptly and properly and must prevent the “unnecessary and unauthorized use of the telephones.”<sup>30</sup>

The member on housewatch also regulates the admission of visitors to the firehouse. According to regulations, “[w]hen civilian visitors enter quarters, the member on housewatch shall ascertain their names and nature of their business and then promptly notify the officer-on-duty.”<sup>31</sup> Moreover, “[m]embers performing housewatch duty shall not permit visitors beyond the housewatch desk without permission of the officer-on-duty.”<sup>32</sup> Visitors are not permitted in quarters after 10 p.m. and “social assemblages” are prohibited at all times.<sup>33</sup>

Furthermore, as City employees, firefighters have an obligation to report any criminal activity or misconduct of which they become aware. The FDNY “All Unit Circular” (“AUC”) 268a states that:

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<sup>20</sup> Regulations Chapter 20.1.3

<sup>21</sup> Regulations Chapter 20.3.2

<sup>22</sup> Regulations Chapter 20.3.2

<sup>23</sup> Regulations Chapter 20.1.2

<sup>24</sup> Regulations Chapter 20.2.1

<sup>25</sup> Regulations Chapter 20.3.3

<sup>26</sup> Regulations Chapter 20.3.4, 20.3.8

<sup>27</sup> Regulations Chapter 20.3.4,

<sup>28</sup> Regulations Chapter 20.3.6-7

<sup>29</sup> Regulations Chapter 20.3.5-6. Apparatus includes the fire engine and ladder.

<sup>30</sup> Regulations Chapter 20.3.9. The Regulations also provide that telephones shall be used only for F.D.N.Y. business and unnecessary or prolonged conversations are prohibited.

<sup>31</sup> Regulations Chapter 20.3.10

<sup>32</sup> Regulations Chapter 20.3.11

<sup>33</sup> Regulations Chapter 19.2.1

[E]very officer and employee shall have the affirmative obligation to report, directly and without delay, to the Inspector General any and all information concerning conduct involving corruption, other criminal activity, conflicts of interest, misconduct and mismanagement by ... City officers and employees . . . . [and] the failure by any employee to report as required above shall constitute cause for removal from office or employment or other appropriate penalty. . . .

AUC 268a also states that the:

Inspector General may require any officer or employee to answer questions under oath concerning any matter related to the performance of his or her official duties, violations of city, state or federal law, FDNY directives, rules and regulations, or any dealings with the City, after first being advised that neither their statements nor any information or evidence derived there from will be used against them in a subsequent criminal prosecution, other than for perjury or contempt arising from such testimony. The refusal of an officer or employee to answer questions having been so advised shall constitute cause for removal from office or employment or other appropriate penalty.<sup>34</sup>

### **Firefighter Biographies**

The central figures involved in the incident described in this report are Firefighters Tony DeLuca, Anthony Loscuito, and former Firefighter Christian Waugh.<sup>35</sup> The following is a brief history of the backgrounds of these individuals based on information obtained from FDNY records.

#### ***Firefighter Tony “TJ” DeLuca***

Tony “TJ” DeLuca became a New York City firefighter in 1996. He was assigned to Ladder 33 in 2000. He has no previous disciplinary history with the Department. He is currently assigned to an administrative position in the personnel unit at FDNY headquarters.

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<sup>34</sup> See AUC 268b, attached hereto as Exhibit 2. See also Mayor’s Executive Orders 16, 78, and 105.

<sup>35</sup> According to the Company Journal, the FDNY members on duty for the night tour, which ran from 6:00 p.m. on August 19, 2004 until 9:00 a.m. on August 20, 2004 were the following: Captain John Stark, Firefighter Brian Gill, Firefighter John McDermott, Firefighter John Hemsley, Firefighter Anthony Loscuito, Firefighter David Auld, Firefighter Edward Reilly, Firefighter Al Ronaldson, Firefighter Tony DeLuca, former Firefighter Christian Waugh, Firefighter Matthew Bruckner, and Lieutenant Michael Morrissey. On duty in the Battalion were Chief James Keane and an aide, Firefighter Michael Essig (assigned from Engine 47).

### ***Former Firefighter Christian Waugh***

Christian Waugh joined the FDNY in 1995. He was assigned to Ladder 33 in October 1998. He had no prior disciplinary history with the Department. After a due process hearing, and based on the recommendation of the OATH judge, Waugh was terminated from the FDNY on December 3, 2004 for refusing to cooperate with DOI's investigation.

### ***Firefighter Anthony "Luigi" Loscuito***

Firefighter Loscuito entered the FDNY Training Academy in October 2001. He has spent his entire tenure at the FDNY in Engine 75. He was arrested before he joined the Department and again after he joined the Department. Specifically, in 1998, Loscuito was arrested and arraigned on charges of Criminal Possession of a Controlled Substance in the fourth degree (methamphetamine), a class C felony, and Criminal Possession of Marijuana, a misdemeanor. He pleaded guilty to Criminal Possession of a Controlled Substance in the seventh degree, a class A misdemeanor, and was sentenced in July 1998 to three years probation. FDNY officials stated that because of his drug conviction, his appointment to the FDNY should have merited further, more intense review process by investigators from the FDNY Bureau of Candidate Investigations to determine his fitness for candidacy.<sup>36</sup> No such investigation occurred. Rather, Loscuito was appointed to the FDNY pursuant to a memo from former Fire Commissioner Thomas Von Essen to Personnel Director Sherry Ann Kavalier dated September 21, 2001 that read, "As per Commissioner Von Essen please appoint this candidate in the next class. List No. 933. Name: Loscuito, Anthony S."

In the three years he has been with the FDNY, Loscuito has been the subject of a second arrest and a disciplinary action. According to FDNY disciplinary records, in 2003 Loscuito was arrested in Westchester County when the police stopped the car in which he was riding. Loscuito was arrested for possession of marijuana and the driver of the car was arrested for possession of cocaine. Based on this arrest, he pleaded guilty to Disorderly Conduct, a violation; the FDNY penalty was a loss of 90 days pay and he was placed on a "stipulation agreement" by the FDNY Bureau of Investigations and Trials ("BITS"). That agreement basically required Loscuito to submit to mandatory random drug testing for two years. Had he tested positive for drugs at any time during that two year period, he would have been subject to termination.<sup>37</sup> The stipulation agreement covered only misbehavior that involved drugs – any other misconduct by Loscuito was not covered by the provisions of the stipulation agreement.

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<sup>36</sup> Such cases are normally referred to as "consideration cases" by the FDNY Bureau of Candidate Investigation.

<sup>37</sup> Loscuito was tested for drug use a couple of times during the stipulation period. These tests were negative for any drug use.



Loscuito is currently assigned to a paid administrative position at Probationary Firefighter's School.

### **The Firehouse**

The members of Engine 75/Ladder 33 commonly referred to the Firehouse as the "Animal House." The nickname "Animal House" was painted on the Firehouse engine and the ladder, and those images were widely depicted in media reports regarding the events of August 19-20, 2004. When Firehouse members were asked about whether the Firehouse got its nickname from the movie "Animal House," which depicted a fraternity house with a sophomoric, hard-partying atmosphere, investigators received several differing and benign answers. According to one genteel account, its name was derived from "the era when fire engines were pulled by horses." Another member stated that the name stems from the fact that they have "the Muppet figure named 'The Animal,' as their mascot." Another member stated that the Firehouse earned the nickname "Animal House" in the 1970's because it was "home to stray dogs and rodents."<sup>38</sup>

The Firehouse at 2175 Walton Avenue at Cameron Place in the Bronx is a very large, modern, three-level building constructed in 1999. In addition to housing Ladder 33 and Engine 75, the Firehouse houses Battalion 19, which oversees numerous Bronx companies. (The photographs taken by the NYPD Crime Scene Unit that responded to the Firehouse are attached hereto as Exhibit 3. They include photos of the exterior of the Firehouse, the sidedoor used to enter the Firehouse, and a study lounge where the sexual activities took place. A diagram of the Firehouse supplied by the FDNY is also attached hereto as Exhibit 4).

The Firehouse has a basement level, which can be accessed from both the sidedoor of the building and the apparatus floor. This level houses a study lounge (the "Lounge"). There are a number of couches and chairs in this room but no television.<sup>39</sup>

On August 20, 2004, when DOI investigators inspected the Firehouse, they observed a bumper sticker that read "Just Suck It" on the door to the Lounge where the sexual activities took place.<sup>40</sup> Numerous FDNY members who were interviewed stated that the bumper sticker was one of many such bumper stickers made up and posted in various places in many firehouses, which originally read "Just Suck It Up." An unidentified member of the Firehouse modified the bumper sticker to create a vulgar connotation. Inside this same room, investigators observed a white FDNY officer's shirt

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<sup>38</sup> Several other firehouses around the city had adopted equally unbecoming nicknames, such as "The Nut House" (Engine 214), "The Happy Hookers" (Engine 279), "The Harlem Zoo" (Ladder 30), "90 Proof" (Engine 90), "Clown College" (Engine 315), and "First at the Bush" (Engine 228). See [www.firebellclub.org](http://www.firebellclub.org). The "Animal House" moniker has since been dropped at the direction of FDNY, as have others in the city, after FDNY officials deemed them to have inappropriate connotations.

<sup>39</sup> See Crime Scene Photographs attached as Exhibit 3 hereto.

<sup>40</sup> See Crime Scene Photographs attached as Exhibit 3 hereto.

hanging on the far wall. The shirt had several lipstick marks on it, a pin that read "Bubble Girls Rock," and a hole in the left sleeve where a FDNY patch had been removed.<sup>41</sup> A photograph of a naked woman locked in a cage hung on the wall. Investigators also found in the Lounge a dartboard and a poster labeled with beer company names and logos.<sup>42</sup>

Down the hallway from the Lounge are a weight room and a locker for bunker gear. The stairs at the far end of the hallway lead up to the apparatus floor. On street level, the main entrance is on Cameron Place. Inside the front door, the housewatch area is to the right, and a TV room is to the left. The apparatus floor is to the right, also facing Cameron Place.

The second floor houses a kitchen, a TV room, sleeping quarters for the firefighters, the Engine and Ladder administrative offices which have beds for the officers, the Battalion office which has beds for the Chief and his aide, a locker room, and a washer and dryer.

In 2003, Engine 75 went on over 5000 runs while Ladder 33 went on over 3400 runs. On August 19-20, 2004, Engine 75 responded to nine alarms and Ladder 33 responded to four (both units responded to three of the runs together).

During interviews with investigators, members explained what they considered to be a typical day at the Firehouse. The FDNY runs two tours of duty every day. The day tour begins at 9 a.m. and ends at 6 p.m. in the evening. The night tour runs from 6 p.m. until 9 a.m. the next morning. It is not uncommon for members to swap shifts in order to work consecutive tours, or a "24," meaning that they would be on duty for a full 24 hours. As a courtesy to on-duty members, an incoming firefighter generally arrives for his tour of duty an hour early to relieve a member on the prior shift. During this hour, members check the trucks and equipment, gather their gear and get information as to what occurred on the previous tours.

Members are required to perform a three-hour "watch" in the housewatch, which is a small room located on the first floor facing Cameron Place. The housewatch monitors activities at the Firehouse including when people enter and leave the Firehouse. The housewatch in this Firehouse contained, among other items, a telephone, a teletype machine on which the companies received fire runs, various department books *and* a bed, television set, and a "Playstation 2" video game system.

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<sup>41</sup> See Crime Scene Photographs attached as Exhibit 3 hereto.

<sup>42</sup> See Crime Scene Photographs attached as Exhibit 3 hereto.

The members of Ladder 33 were assigned to housewatch duty for the month of August 2004. According to the Firehouse Company Journal, for the night tour beginning at 6 p.m. on August 19, 2004, the housewatch assignments were as follows:

FF Edward Reilly: 6 p.m. - 9 p.m.  
FF John Hemsley: 9 p.m. - 12 a.m.  
FF Al Ronaldson: 12 a.m. - 3:24 a.m.  
FF Tony DeLuca: 3:24 a.m. - time unknown.<sup>43</sup>

The commanding officer of Engine 75 on August 19-20, 2004 was Captain John Stark; the commanding officer of Ladder 33 was Lieutenant Michael Morrissey; the Chief of Battalion 19 was Chief James Keene.

The firefighters told investigators that they had downtime when they were not on runs. Their downtime was spent engaging in various activities, including watching television in the room adjacent to the kitchen (hereinafter “T.V. room”), studying for exams, preparing meals, sleeping, playing video games and surfing the Internet.

The online computer activities of the firefighters had become a problem in the months preceding August 19-20, 2004.<sup>44</sup> Captain John Stark<sup>45</sup> recalled that in 2004 he discovered that pornography had been downloaded from the Internet onto a Firehouse computer, which was located in the kitchen.<sup>46</sup> Captain Stark stated he became aware of these activities when he walked by the computer and noticed an inappropriate image. According to Stark and other Firehouse members interviewed by DOI, he immediately ordered the members to remove it from the screen. However, Captain Stark stated that the online activity continued after this first instance, with the members downloading images of “naked women.” To again address this issue, Captain Stark conducted a roll call of all the members in the Firehouse. He instructed them that this activity was improper and that it would not be tolerated. He also required the members to repeat his directive back to him. Following this roll call, Captain Stark typed up a computer use policy and “gave a copy to every officer and taped a copy to the computer monitor.” Notwithstanding all of those actions, Stark stated that some of the senior firefighters in the Firehouse went so far as to challenge his right to tell them what they were prohibited

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<sup>43</sup> From 3:07a.m. until approximately 3:24a.m., DeLuca was out on a run. He did not sign out at the end of his housewatch tour.

<sup>44</sup> Misuse of a firehouse computer became an issue in another case in 2004. In that case, which involved another firehouse, it was revealed that a firehouse computer was used by a firefighter for inappropriate purposes involving a minor. One arrest was made in that case.

<sup>45</sup> Captain Stark has been a member of the FDNY since 1979. He was promoted to Captain in 1998 and became the company commander of Engine 75 in January 2000. He has no prior disciplinary history with the Fire Department. Captain Stark is currently assigned to Division 6 in the Bronx. During his career, Captain Stark has been awarded two individual medals and one unit citation for acts of personal bravery, initiative and capability. His brother, FDNY member Jeffery Stark, died on September 11, 2001 at the World Trade Center.

<sup>46</sup> AUC 327 forbids members from accessing pornography and inappropriate websites at FDNY, even on personal computers. *See also* Regulations 10.1.1, 3, 6, and 8 regarding responsibilities of Captains.

from accessing on the computer. Captain Stark explained his authority to those subordinates by stating, in substance, that his he was the Captain and his directives were to be followed. To further reinforce his orders, Captain Stark accessed the computer and deleted every file that he found to be inappropriate. He also regularly toured the Firehouse and removed objectionable material from the locker room.<sup>47</sup>

### **The Complainant**

The Complainant is a resident of Staten Island. During her interview with detectives from the 120th NYPD precinct in Staten Island, the Complainant stated that after the events of September 11, 2001 she had a nervous breakdown and began having sexual relations with New York City firefighters because she “felt bad” for them.<sup>48</sup> During that time she was diagnosed with bipolar disorder and began taking prescription medication to treat that condition.

### **The Complainant’s history with members of the Firehouse**

According to DeLuca and one other firefighter (hereinafter “Firefighter A”), the Complainant became involved with the members of the Firehouse through Firefighter A. According to Firefighter A, he met the Complainant in 2003 on an internet site that caters to those who are seeking to meet firefighters and police officers. They began to chat online, exchanged phone numbers, and eventually met in person. However, when Firefighter A met the Complainant, he discovered that the Complainant worked at the same company as someone he knows, so he attempted to distance himself from her. Still, the Complainant continued to call Firefighter A on his cell phone on occasion. During one of these calls, Firefighter A was at the Firehouse and handed the phone to DeLuca. Thereafter, the Complainant began to call the Firehouse directly. Firefighter A was annoyed to discover that DeLuca had given her the Firehouse number.<sup>49</sup>

Initially, the Complainant’s contact with the Firehouse consisted of telephone calls and, according to DeLuca, “building a relationship with whoever answered the phone.” DeLuca testified that his first contact with the Complainant occurred when he and others at the Firehouse listened to her “perform phone sex.” DeLuca stated that in the months preceding August 19-20, 2004, he spoke with the Complainant by telephone four or five times, and several of those calls he initiated. In addition to the phone calls,

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<sup>47</sup> Capt Stark’s testimony about what actions he took in response to his discovery of pornography on the Firehouse computer were corroborated by the officers and firefighters interviewed by DOI who also said, in substance, that Capt Stark was both a firm disciplinarian and a capable leader who regularly displayed a deep concern for the morale and well-being of the members under his command and for the FDNY. See Regulations Chapter 25.1.2 requiring “dignified and firm” discipline on the part of supervisors.

<sup>48</sup> The Complainant produced for DOI a variety of patches and t-shirts featuring the logo of different firehouses, including a patch from Engine 75/Ladder 33/Battalion 19. She also produced for investigators 4 parking plaques (2 issued by the UFA, 1 issued by the UFOA and 1 by the FDNY), with expiration dates ranging from 2002-2004.

<sup>49</sup> Firefighter A was not on duty and was not at the Firehouse on August 19-20, 2004.

DeLuca communicated with the Complainant using the Firehouse computer, through instant messaging and e-mail. DeLuca communicated with the Complainant by computer in the Firehouse, and in his AOL profile DeLuca indicated that he was a New York City Firefighter with the screen name of "TJDL33," which is a combination of his initials and an abbreviation of Ladder 33.

DeLuca stated that the conversations with the Complainant, both by computer and over the phone, became more sexually explicit in the months proceeding August 19-20, 2004. He claimed that her e-mails to him indicated that she was interested in having sex with him and ultimately she sent him her cell phone number, which he kept in his wallet. While DeLuca stated that he never told the Complainant that he did not want to have sex with her in any of his e-mails, he testified that he kept her telephone number with the intention of inviting her to a party or other event where she might meet firefighters and have sexual relations with them.

DeLuca described the Complainant as a "buff" and "a groupie following firefighters." DeLuca testified that members of the Firehouse referred to the Complainant in derogatory terms. His communications with the Complainant ultimately led to the sexual misconduct at the Firehouse on August 20, 2004.

### **The Events of August 19<sup>th</sup> and 20<sup>th</sup>**

On the afternoon of August 19, 2004, the Complainant began to call the Firehouse. These phone calls continued throughout the afternoon into the evening hours.<sup>50</sup> DeLuca confirmed at least two of these phone calls occurred while the members of the Firehouse were in the kitchen preparing the evening meal. He stated that in a relatively short initial conversation, the Complainant told him that she was planning to go to a bar or club that evening. According to DeLuca, when the Complainant called the Firehouse a second time, Christian Waugh answered the phone in the kitchen. On some occasions when the Complainant called the Firehouse, the men would listen in on telephone extensions when possible. So when she called on August 19<sup>th</sup> and Waugh answered the phone, he motioned that she was on the phone and DeLuca ran to a different phone to listen in. According to DeLuca, the conversation between Waugh and the Complainant became sexually explicit with the Complainant "discussing sexual acts on herself" while she was driving to a club. Firefighter John Hemsley<sup>51</sup> testified that he observed DeLuca listening in on the phone near the locker room.<sup>52</sup> According to Hemsley, DeLuca "had his hand over the receiver and pointed the phone in my direction and had me listen." Hemsley overheard a conversation between Christian Waugh and a

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<sup>50</sup> Records of the Firehouse telephone and the Complainant's cell phone show ten telephone calls between 1:04 p.m. and 8:51 P.M.

<sup>51</sup> Firefighter Hemsley joined the FDNY on March 7, 2004. He is still in his probationary year. He has no disciplinary history with the Department. He is currently assigned to Engine 83 in the Bronx.

<sup>52</sup> Records of the Firehouse telephone and the Complainant's cell phone show the call began at 9:00 p.m.

female which was of a sexual nature. Hemsley then walked away and there is no evidence that he was involved in the events that took place later that night.

Later in the evening, while at a club in New Jersey, the Complainant again spoke to DeLuca on the phone while he was at the Firehouse. According to the Complainant, DeLuca asked her “to come up to his firehouse in the Bronx after 2 o’clock in the morning,” after “the Chief (Keene) was asleep.”<sup>53</sup>

During the night of August 19, Engine 75 and Ladder 33 went on several runs. While en route to a call for a car fire, Engine 75 was discovered to have a flat tire. After extinguishing the fire, the Engine Company returned to the Firehouse to await a FDNY mechanic’s arrival to fix the tire. Captain Stark testified that at 1:57 a.m. he called the FDNY dispatcher and put the Engine out of service, so that the tire could be repaired.

FDNY Fleet Services mechanic George Hicks testified that he was notified to respond to the Firehouse at approximately 2:00 a.m. FDNY Fleet Services records indicate that light-duty Firefighter Paul Murphy was also dispatched from the Long Island City Fleet Service facility at 2:55 a.m. to assist mechanic Hicks.

Mechanic Hicks arrived at the Firehouse at approximately 3:00 a.m. He was greeted at the apron<sup>54</sup> by a “fairly stocky” firefighter wearing bunker pants. DeLuca confirmed that he was the firefighter in bunker pants who greeted Hicks. He testified that he was at housewatch when the mechanic arrived and that he had several conversations with him throughout the evening. However, there is no Company Journal entry indicating the mechanic’s arrival.<sup>55</sup>

According to FDNY dispatch records, at 3:07 a.m., a tone alarm was sounded at the Firehouse, which required the Engine, Ladder and Battalion to respond. Firefighters interviewed by DOI stated that this tone alarm initially caused some confusion, because the Engine Company had already reported to dispatch that a flat tire had placed them out of service. Moreover, many personnel had gone to sleep after the Engine was placed out of service. Although the alarm caused confusion, members of the Engine awoke and assembled downstairs to determine whether they were to respond. Captain Stark and others testified that Stark called dispatch to ask why the Engine was being called for the run given that they were out of service due to the flat tire. Stark reiterated for dispatch that they had a flat tire on the Engine and were out of service. FDNY dispatch records confirm that Captain Stark called at 3:09 a.m. to reconfirm that the Engine was out of service. As a result, while Engine 75 remained at the Firehouse, Battalion Chief Keene, Lt. Morrissey and Ladder 33 (including DeLuca and Waugh) responded to the alarm.

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<sup>53</sup> Records of the Firehouse telephone and the Complainant’s cell phone show the call occurred at 11:42 p.m.

<sup>54</sup> Members of FDNY commonly refer to the sidewalk outside the Firehouse as “the apron.”

<sup>55</sup> The FDNY Guide To Company Journal Entries 2.11 requires that when civilian employees visit the Firehouse they must note their entry and departure in the Company Journal *See also* Regulations Chapter 20.3.8.

Chief Keene stated that it was a run to Richmond Plaza regarding a gas leak and that it was a normal “turn out.” Based on all accounts and the telephone records, the Complainant had not yet arrived at the Firehouse by that time.

On his return from that run, DeLuca took over housewatch duty from Al Ronaldson at 3:24 a.m. Ronaldson stated that he then went to sleep.<sup>56</sup> Testimony established that Chief Keene and Lt. Morrissey went to bed after the run to Richmond Plaza. Capt. Stark was also asleep at that time.

At 3:29 a.m. DeLuca called the Complainant’s cell phone from the Firehouse phone. DeLuca stated that she told him during this conversation that she was at a club and “she wanted to come to the Bronx.” Asked if he had thought she was serious about coming to the Bronx, DeLuca stated that he “thought she was full of shit.” DeLuca also testified that Christian Waugh had told him earlier in the evening that the Complainant would be coming to the Bronx that night.

After DeLuca’s telephone call, the Complainant set out from a club in New Jersey toward the Firehouse, but she had considerable trouble with directions. She called the Firehouse four times to ask for directions: at 3:36 a.m., 3:48 a.m., 3:57 a.m., and 4:08 a.m.<sup>57</sup> In addition, she called both 311 and 911 for directions.<sup>58</sup>

At approximately 4:00 a.m., Firefighter Murphy arrived with the tire truck to attend to the Engine’s flat tire.<sup>59</sup> Again, there is no Company Journal entry indicating his arrival. Mechanic Hicks had been waiting for Murphy in the television room by the kitchen. DeLuca notified Hicks when Murphy arrived. Hicks then went down to the apparatus floor, met Murphy, and began to work on the left front tire of the Engine.

The Complainant arrived in the Bronx shortly before 4:30 a.m. and again began calling for directions, according to both DeLuca and the Complainant. Her telephone records show calls to Engine 75 at 4:18, 4:26 and 4:29 a.m.<sup>60</sup> This is corroborated by Hicks, who testified that after he arrived at about 4:00 a.m., he observed both Loscuito talking on the phone, and DeLuca outside the Firehouse in front of the housewatch talking on a phone.<sup>61</sup>

According to the testimony of DeLuca and the Complainant, and the records of the Firehouse and the Complainant’s cell phone, the Complainant arrived at the Firehouse at approximately 4:30 a.m. Hicks and Murphy were still at the Firehouse working on the

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<sup>56</sup> No evidence was obtained that suggested Ronaldson had anything to do with the misconduct that ensued.

<sup>57</sup> This is based on records of the Complainant’s cell phone.

<sup>58</sup> Records of the Complainant’s cell phone show calls to 311 and 911 at 4:12 a.m.

<sup>59</sup> Murphy was on light duty after taking a medical leave in 2003. He was assigned to drive a tire truck to support the mechanics.

<sup>60</sup> This is based on records of the Firehouse telephone and the Complainant’s cell phone.

<sup>61</sup> Records of the Firehouse telephone and the Complainant’s cell phone show eight calls between 3:57 a.m. and 4:29 a.m.

flat tire when the Complainant arrived. However, as described in detail below, DeLuca kept her out of sight, and neither of them saw the Complainant as they worked on Engine Company 75's truck.

After fixing the left front tire, Murphy left with the tire truck. Just after Murphy left, Loscuito approached Hicks. Hicks described Loscuito as a "short, skinny, young guy." Anthony Loscuito admitted that it was he who approached Hicks. Loscuito testified that on his way to the bathroom, he went to the apparatus floor where he encountered Hicks and informed Hicks that there appeared to be a problem with another tire on the Engine. Because Murphy had already left with the tire truck, Hicks went into the housewatch at 4:48 a.m. to call the dispatcher and have the tire truck return to the Firehouse.<sup>62</sup> Hicks stated that the housewatch was empty during this time. Contrary to Loscuito's later claim to DOI that after speaking to Hicks he went to sleep in the T.V. room for the remainder of the night, Hicks stated that when he returned to the apparatus floor to wait for the tire truck he observed Loscuito still on the apparatus floor. Shortly thereafter, Murphy returned with the tire truck and Hicks began to work on the left rear tire of the Engine.

### **The Sexual Misconduct**

When DeLuca originally testified at DOI on August 25, 2004, he denied having any sexual contact with the Complainant. However, DOI and the NYPD had interviewed the Complainant extensively and had retrieved telephone records and dispatch tapes reflecting her contact with and visit to the Firehouse. DOI indicated to DeLuca and his counsel that evidence indicated DeLuca had given false testimony. DeLuca became worried about his false testimony and he returned to DOI on August 26, 2004 to testify truthfully about what happened in the early morning hours of August 20, 2004.

According to DeLuca, when the Complainant arrived she first parked her car in front of the building on Cameron Place, and DeLuca and the Complainant had a short conversation, which he described as "sex talk, regarding her body ... and her outfit." DeLuca stated that the Complainant indicated her desire to have sex with him that evening and that he "certainly didn't slam the door and ... walk away." At that point, she asked to use the bathroom and the two of them entered the Firehouse through the sidedoor. The bathroom is located on the apparatus floor straight back from the housewatch. DeLuca indicated that he had some concern that the mechanic fixing the rig might see the Complainant. He accompanied her to the bathroom. While she was in the bathroom, DeLuca went to the second floor TV room adjacent to the kitchen where Chris Waugh was sleeping on a recliner. DeLuca kicked Waugh's foot to wake him and asked Waugh to come with him.

The two firefighters went down to the bathroom where the Complainant introduced herself to Christian Waugh. A brief conversation ensued between Waugh and

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<sup>62</sup> Records of the Firehouse telephone establish this call was made at 4:48 a.m.



the Complainant. DeLuca stated the Complainant asked Waugh to put on his bunker pants to which Waugh replied “no.” DeLuca left them and returned to the housewatch. Shortly thereafter, DeLuca returned to the conversation between Waugh and the Complainant. DeLuca also stated that at this time Anthony Loscuito was walking around the apparatus floor and DeLuca introduced Loscuito to the Complainant as “Luigi.”<sup>63</sup> DeLuca was concerned that they would be spotted by Hicks or Murphy, so he suggested that they move away from the apparatus floor. DeLuca, Loscuito and the Complainant then walked downstairs. DeLuca told the Complainant to move her car from in the front of the Firehouse. They walked out of the Firehouse from the side exit. DeLuca opened the sidegate to the Firehouse parking lot whereupon she pulled her car into the Firehouse lot. DeLuca and the Complainant stated that during the time that he and the Complainant were outside the Firehouse, the conversation again became sexual in nature and focused on the bunker pants and harness that he was wearing. The Complainant again indicated her interest in having sex with him and they kissed. They re-entered the Firehouse through the side door and went into the hallway on the lower level of the house, which leads to the Lounge.

DeLuca testified that when they re-entered the Firehouse, Christian Waugh was in the hallway “floating around,” and at that point Waugh saw DeLuca come inside with the Complainant. DeLuca stated that the Complainant wanted to perform oral sex on him, so he suggested that they move into the Lounge. The Complainant stated she and “TJ” (DeLuca) entered the Lounge, which she identified from Crime Scene photos. Once inside the Lounge, she saw bunker gear on the floor. According to both DeLuca and the Complainant, upon entering the Lounge they began to kiss. According to DeLuca and the Complainant, she then performed oral sex on DeLuca. Following that, they engaged in intercourse. DeLuca and the Complainant stated that he did not wear a condom. Thereafter, the Complainant wiped her vaginal area with a pillowcase that DeLuca had handed her. He wiped his hands on the same pillowcase.

The Complainant then tried on DeLuca’s bunker pants. DeLuca testified that after the Complainant removed the bunker pants, they both exited the Lounge and found Christian Waugh standing in the hallway outside. According to DeLuca, the Complainant stated to Waugh that she “just rode” DeLuca, and the Complainant and Waugh began a conversation about giving her a pair of bunker pants. DeLuca then stated that he left Waugh and the Complainant in the hallway outside the Lounge and DeLuca returned to the housewatch area.

According to the Complainant, Waugh sat down on a white couch in the Lounge and announced to the Complainant that he wanted her to perform oral sex on him. Waugh then exposed himself to her. The Complainant explained in detail that she then performed oral sex on him. When she finished performing oral sex on Waugh, she spit

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<sup>63</sup> Although the Complainant did not identify Loscuito from photos shown to her the next day by police, Loscuito admitted that he goes by the name “Luigi”; all others from the Firehouse stated Loscuito went by the nickname “Luigi;” and no one else at the Firehouse is named Luigi. Moreover, Loscuito used the screen name “Luigi 75” on the computer.

into the same pillow case she had used previously. Waugh got up from the couch, exited the room, and left the Complainant kneeling on the floor.

DeLuca testified that following his sexual activities with the Complainant, he returned to the housewatch where he saw Loscuito. DeLuca told Loscuito that he (DeLuca) had “gotten laid.” Loscuito replied “are you fucking kidding me!?” DeLuca testified that Loscuito then left the housewatch and walked towards the downstairs area where the Complainant was.

The Complainant stated that following her sexual encounter with Waugh, he left the Lounge. After a short time, the Complainant stated that “Luigi” came into the room. Luigi gave her a glass of water and some chocolate chip cookies.<sup>64</sup> The Complainant stated that Luigi then walked over to an officer’s white shirt that was hanging in the room and, using the Complainant’s keys, removed the FDNY patch and gave it to her.<sup>65</sup> The Complainant stated that Luigi then pulled his pants down to his knees and exposed himself to her. The Complainant explained in detail that she and Luigi then engaged in a variety of sexual acts and that Luigi used a condom.

DeLuca went up to the second floor bunk room and woke up Firefighter Matthew Bruckner to “show him this woman,” because he thought it would be amusing and that it would “shock him.”<sup>66</sup> Bruckner also testified that DeLuca awoke him in the bunk room. DeLuca told him “to come downstairs,” which he did. Bruckner was the junior member in the Firehouse and assumed that some work needed to be done. On his way downstairs, Bruckner stopped at the bathroom on the apparatus floor. They then walked down to the Lounge together. Once at the door to the Lounge, Bruckner observed Chris Waugh standing in the hallway and Anthony Loscuito exiting the Lounge with a woman. The Complainant stated that after her sexual encounter with “Luigi,” DeLuca entered the Lounge with another firefighter (established to be Bruckner). The Complainant stated that after a very brief verbal exchange, Bruckner left the Lounge. According to the Complainant, DeLuca and Bruckner, no sexual encounter occurred between the Complainant and Bruckner. Bruckner emphatically testified that as soon as he saw the Complainant he walked away and returned to the bunk room because he did not want to get into trouble, which DeLuca confirmed.<sup>67</sup>

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<sup>64</sup> DeLuca also testified that Loscuito brought cookies and water downstairs to the Lounge for the Complainant.

<sup>65</sup> A photo of the shirt with the patch missing is among the Crime Scene Photographs attached as Exhibit 3. Moreover, the Complainant had an Engine 75 patch that she turned over to the police and DOI during the investigation.

<sup>66</sup> FF Bruckner began his career with the FDNY in December 2003 which meant he was on probation through December 2004. He was assigned to Engine 75 in January 2004. He has no disciplinary history with the Department. He is currently assigned to Engine 83 in the Bronx.

<sup>67</sup> Bruckner also stated that shortly after he returned to the bunkroom someone threw a firecracker into the room. Although the firecracker made a loud noise, none of the members interviewed was particularly concerned about it, and all said they immediately went back to sleep. This occurred down the hall from where officers were sleeping. None of the firefighters admitted throwing the firecracker.

After Bruckner left, the Complainant remained in the hallway with DeLuca, Waugh and Loscuito. She stated that she was tired and wanted to sleep at the firehouse. Concerned that she might be seen, the firefighters adamantly told her that was out of the question and she had to go. She then asked the firefighters for \$20.00 for a hotel room because she was tired and did not want to drive home to Staten Island. DeLuca stated that she asked for \$100.00. DeLuca told her that they did not have the money and asked her to leave, which she did. After she left, DeLuca stated that he spoke to the Complainant on her cell phone while she was driving home. DeLuca stated that during their conversations, she discussed her sexual activities with Waugh and Loscuito.<sup>68</sup> DeLuca further testified that the Complainant was angry with Waugh because he had insulted her.

Back on the apparatus floor, mechanic George Hicks had finished repairing the second tire and prepared to leave the Firehouse. He noticed that once again, the housewatch was empty. While washing his hands in a sink in the rear of the apparatus floor, Hicks noticed DeLuca, the “bunker gear fireman,” and Loscuito, the “smaller guy.” He saw that they had walked up from the downstairs area where the Lounge is located. As mentioned above, Hicks stated that he never saw a woman in the Firehouse at any time that evening. He left the house at approximately 5:30 a.m. Loscuito’s testimony was that he was asleep at that time.

### **The Complainant Reports an Alleged “Rape” to the Police**

After leaving the Firehouse, the Complainant made a number of telephone calls. Her cell phone records indicate calls to her voice mail beginning at 5:11 a.m. At 5:12 she called the Victory Motor Inn, a Staten Island Motel. At 6:05 a.m. the Complainant called the Staten Island Advance newspaper but her phone records indicate that she blocked the call so that the Advance could not see her number. She also called Engine 75/Ladder 33 several times after she left the Firehouse. For example, at 6:07 a.m., she called Engine 75/Ladder 33 and spoke to DeLuca for approximately 6 ½ minutes. DeLuca testified that he spoke to the Complainant and during that time she said enjoyed having sex with him and she wanted him to call her in the future; that she had had sex with “Luigi” and she wanted to have sex with him again; and she was angry with Christian Waugh because he had said something insulting to her.

The Complainant made several other calls from her cell phone until she ultimately called 911 from her parents’ home at 6:51 a.m. and stated, “I was at a Firehouse in the Bronx, and I was raped by four firemen.” An ambulance from St. Vincent’s Hospital in Staten Island was dispatched to the location to treat the Complainant. According to the FDNY dispatch records, the ambulance arrived at the location at 6:58 a.m. and began treatment of the Complainant. At 7:15 a.m., the dispatch record indicates the following narrative by the Complainant:

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<sup>68</sup> Records of the Firehouse telephone and the Complainant’s cell phone show three calls at 5:41, 5:42 a.m. and 6:07 a.m.

sts fem patient had sex with male friend last night at ENG 75 – and then 3 other firefighters in fire house held her down and continued further ongoings...

### **The Cover-up at the Firehouse**

When the DOI investigators arrived at the Firehouse on the morning of August 20, 2004, they conducted a walkthrough of the Firehouse with members of NYPD Special Victims Unit. The Lounge floor was freshly mopped and a mop and bucket were found outside the sidedoor of the Firehouse. The Complainant had already informed investigators about her use of the pillow case following her sexual contact with the firefighters. However, when investigators searched the Firehouse for it, the pillow case was gone.<sup>69</sup> A pillow without a pillowcase was in the Lounge. None of the members interviewed by DOI admitted to mopping up the floor in the Lounge, or disposing of the pillowcase, nor could anyone identify who cleaned the room. No condom was found either. Moreover, mopping the floor of the Lounge in the early morning before the change of tours was completely inconsistent with the regular cleaning schedule at the Firehouse, as described by all the members who were interviewed. To the contrary, cleaning, or “committee work” in Fire Department terminology, was always performed after the beginning of 9:00 a.m. tour.

In interviews conducted by DOI, members of the Firehouse testified that, because of the size of the house, committee work was divided into two areas: upstairs, meaning the second floor, and downstairs, including the housewatch area, apparatus floor and kitchen. Whichever company was assigned housewatch duty for that particular month was also responsible for the downstairs committee work. The company that was responsible for procuring and preparing the meals for the Firehouse would also perform the committee work for the upstairs. In August 2004, Ladder 33 was responsible for housewatch and downstairs committee work, while Engine 75 was responsible for the meal.

All the members stated that committee work had not been performed on the morning of August 20, 2004. Furthermore, everyone stated that the Lounge was not a room that was usually cleaned during committee work. In fact, every Firehouse member who was interviewed could not remember when they last saw anyone clean the Lounge.

Tony DeLuca, Christian Waugh, Anthony Loscuito, John Hemsley, and Matthew Bruckner gave consent for their respective lockers to be searched. DOI investigators and NYPD detectives searched the lockers. Also present for the search was Bronx Borough Commander Joseph Callan. The Lounge and the trash cans outside the Firehouse were

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<sup>69</sup> During one of the phone calls she made, the Complainant had also reported to the FDNY dispatcher how she used the pillowcase following her sexual encounters.

also searched. The pillowcase that the Complainant described to NYPD, and that DeLuca confirmed to DOI in later interviews, was never found.

### **Fire Officials Learn About the Allegations**

At approximately 8:00 a.m., Captain Stark was in his office and received a phone call from “headquarters saying there is a problem in the Firehouse.” He stated that this call was from Division 7 Chief Benson, who informed him that there was a problem with the members that had worked the night tour. Captain Stark then ordered the members of both companies to go into the kitchen, and “just sit there” until he could gain more information. He then returned to his office and met Battalion Chiefs Keene and McCarthy. Shortly after 9:00 a.m., Captain Stark learned from Battalion Chief McCarthy, who was to relieve Chief Keene on the incoming tour, that there was a “gang rape” allegation against members of the Firehouse. McCarthy also informed Stark that according to the NYPD, the Complainant had alleged that DeLuca was involved. McCarthy and Keene then ordered Stark to identify everyone that was on duty that night and to “lock the place down.”

After learning of the allegations from Keene and McCarthy, Stark conducted a roll call, and informed the men, “that this was a serious charge.” He ordered them to stay in the room until he could find out what was going on. No one in the room volunteered any information. During this roll call Stark noticed that Tony DeLuca was not present and went to search for him. Stark found DeLuca in the hallway and told DOI that:

he [DeLuca] was not forthcoming with information. In fact, he stared at me for quite a while - a long, uncomfortable moment - several moments in silence . . . I figure my exact words were: ‘Did something happen here?’ Silence. Then he said ‘off the record, we had an incident with a woman here last night.’ I said to him, ‘in the Firehouse?’ He said, ‘no, at the curb in a car.’ And I said, ‘did you rape her?’ He said, ‘No. There was no rape.’ I asked him, ‘was anyone else involved?’ He whispered the names of two other members.

The two names DeLuca gave Captain Stark were Waugh and “Luigi” who Stark knew to be Anthony Loscuito. He then directed DeLuca to go into the kitchen with the others. Many police personnel had arrived at that point and took charge of the matter.

### **Investigation Continued**

On the morning of August 20, 2004, the FDNY BITs unit notified DOI of the Complainant’s allegations, and a team of DOI investigators went to Staten Island. At 9:00 a.m., FDNY operations took the Firehouse out of service on the orders of Chief of Operations Salvatore Cassano. At approximately 10:00 a.m., DOI Squad detectives arrived at St. Vincent’s Hospital to interview the Complainant. At that time, she was being examined by hospital staff and interviewed by detectives from the NYPD 120th

Precinct. Doctor Almeida, the emergency room physician at St Vincent's Hospital, stated that the Complainant's "supra pubic area" had pain and was tender. Doctor Almeida did not find any scarring and/or trauma, but found the presence of semen.

The 120th Precinct's interview was terminated at approximately 10:45 a.m., because the hospital personnel had to continue their examination of the Complainant. Also, members of the NYPD Bronx Special Victims Squad arrived and took charge of the investigation.

On August 20, 2004 at approximately 3:30 p.m., the Complainant was re-interviewed at the Bronx Special Victims Squad by Assistant District Attorney Borgstedt of the Bronx District Attorney's Office. After conducting an inquiry including interviewing the Complainant, the Bronx District Attorney's Office declined prosecution.

### **Former Firefighter Waugh Refuses To Testify**

Between August 23, 2004 and August 27, 2004, DOI interviewed every member of the Firehouse who had been on duty during the night tour of August 19-20, 2004, with the exception of Christian Waugh. Waugh was called into DOI for an interview on August 26, 2004, at which time he invoked his right to remain silent under the Fifth Amendment and refused to speak to investigators regarding the allegations. DOI investigators informed Waugh, pursuant to Mayor's Executive Order 16, that anything he said would not be used against him in a criminal proceeding. DOI investigators advised Waugh further that if he failed to answer questions posed by DOI, he could lose his job. Waugh was read Mayor's Executive Order 16, which provides in pertinent part:

The Commissioner [of DOI] and with the approval of Commissioner or the Inspector General and any person under the supervision of the Commissioner or the Inspector General may require any officer or employee of the city to answer questions concerning any matter related to the performance of his or her official duties, or any person dealing with the city concerning such dealing with the city, after first being advised that neither their statements nor any information or evidence derived therefrom will be used against them in a subsequent criminal prosecution other than for perjury or contempt arising from such testimony. The refusal of an officer or an employee to answer questions on the condition described in this paragraph shall constitute cause for removal from office or employment or other appropriate penalty.<sup>70</sup>

Waugh was further advised that under Mayor's Executive Order 16.<sup>71</sup>

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<sup>70</sup> Mayor's Executive Order 16 (4)(b)

<sup>71</sup> Mayor's Executive Order 16 (4)(c)

Every officer or employee of the city shall cooperate fully with the Commissioner [of DOI] and the Inspectors General. Interference with or obstruction of an investigation conducted by the Commissioner or Inspector General shall constitute cause for removal from office or employment or other appropriate penalty.

Waugh was given the opportunity to consult with his attorney, who was present with him at DOI. Subsequently, he was twice offered immunity for his full testimony, but he refused to cooperate with DOI. As a consequence, after a due process hearing before the Office of Administrative Trials and Hearings (“OATH”) in which he was represented by an attorney, Waugh’s employment with the FDNY was terminated on December 3, 2004.

### **Loscuito Lies to Investigators** <sup>72</sup>

On August 25, 2004, Anthony “Luigi” Loscuito was brought in for questioning by DOI to our offices located in Manhattan, where he was placed under oath. Loscuito testified that he did not see, hear about, meet, talk to or have sex with a woman at any time in the Firehouse on August 19-20, 2004. He testified that he did not even know a woman was at the Firehouse that night. Loscuito’s story is contradicted by the testimony of DeLuca, Hicks and Bruckner, among other witnesses and evidence. Loscuito testified that after the last run for the Engine at approximately 2 a.m. he went to the TV room on the first floor where he claimed he slept from 3 a.m. to 8 a.m. He stated that Firefighters Brian Gill and Edward Reilly were also asleep in that room. However, neither of them could recall Loscuito being in the room during the night. Reilly recalled that there were people in the room during the night, but could not identify them. Gill stated that only Reilly was in the room when he fell asleep around 3 a.m., but Loscuito was there when he woke up at 8:00 a.m.

Investigators also found that the Firehouse computer had been used for a posting in which Loscuito advertises that he is a FDNY firefighter and he wants to meet women for a variety of sexual activities. In addition to that posting, investigators found 3 other website postings, all sexual in nature and replete with references to the FDNY, under the screen-name of “Luigi75.” Some of the postings featured photos of Loscuito with no shirt on and another features him dressed in his fire gear, his E75 helmet, standing in front of what appears to be Ground Zero. The name of the website featuring the photograph of Loscuito at Ground Zero is “loveaccess.com.”

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<sup>72</sup> Under the New York Penal Law, a person who lies under oath to DOI may be guilty of perjury. New York Penal Law § 210.15, provides that a person is guilty of perjury in the first degree when he swears falsely and when his false statement (a) consists of testimony, and (b) is material to the action, proceeding or matter in which it is made. Perjury in the first degree is a class D felony, punishable by up to seven years imprisonment. DOI has made a criminal referral to the New York County District Attorney’s Office and DOI provided them with, *inter alia*, the information in this Report and all related memoranda and materials.

### **The Complainant Files a Notice of Claim Against the City**

On November 16, 2004, the Complainant filed a “Notice of Claim” with the New York City Comptroller’s Office for monetary damages. In her notice she states that on August 20, 2004, she was:

“restrained against her will, sexually sodomized, raped, physically and emotionally severely injured by three uniformed firefighters namely Christian Waugh, Anthony Loscuito and Tony DeLuca.”

She further claimed that:

[T]he rape was the culmination of a prolonged, systematic period of abuse perpetrated upon the Claimant by members of the New York City Fire Department which included Firefighters, Captains, Lieutenants, Chauffeurs within fire department stations . . . and such abuse was fostered by the acquiescence, the encouragement and the environment created by the New York City Fire Department.

While the Complainant had previously reported that she had sexual relations with numerous firefighters after 9/11 because “she felt sorry for them,” she was either unwilling or unable to definitively identify for investigators any other firefighters with whom she had sex, and we have been unable to confirm whether that is actually the case.

### **CONCLUSION**

On August 20, 2004, Firefighters Tony DeLuca, Anthony Loscuito and former Firefighter Christian Waugh engaged in inappropriate sexual activity with the Complainant inside the Firehouse, and sought to conceal those actions in the hours that followed. By doing so, those members violated FDNY regulations and compromised the security of the Firehouse.

Since that time, the FDNY has taken a number of steps to assure that further conduct which might bring disrepute on the agency will not occur. The steps have included:

- removing the bed, video games, and television from the housewatch area in the Firehouse
- removing inappropriate photographs and items with beer logos from the Firehouse.

Citywide, the FDNY has taken additional steps to protect the image of the FDNY and assist its members. For example:



- FDNY has modified its computer use policy to prohibit inappropriate use of computers in FDNY firehouses. This includes a prohibition against using computers to access or download pornography.
- FDNY has directed firehouses to change inappropriate nicknames, such as “Animal House.”
- The FDNY ordered the removal of all beds, video games, televisions and the like from the housewatch areas in all Firehouses.
- FDNY has created and staffed a unit to conduct random drug testing. This unit has been operating since August 2004.

While these steps are significant, there are additional actions that the FDNY can take to help assure that the improper conduct by a member will not bring disrepute on the agency.

### **I. FDNY Should More Rigorously and Consistently Enforce Its Department Regulations**

The incident in the Bronx Firehouse discussed in this Report as well as the drinking/assault incident in the Tottenville Firehouse on New Years Eve-New Years Day of 2004, demonstrate problems, the causes of those problems and put into sharper focus some recommendations and issues for the FDNY to consider.<sup>73</sup> For example, at times the FDNY needs members to work 24-hour shifts due to manpower demands or personnel shortages. But the FDNY also permits, with limitations, its members to swap shifts for their convenience so they can work two shifts consecutively - a practice referred to as “mutuals.” As a result, the FDNY permits members to work 24-hour shifts even when unnecessary to the functioning of its firehouses. The Tottenville and Bronx Firehouse incidents both occurred while members were working such mutual shifts. Because its members work these long shifts, the FDNY expects and condones members to sleep during their tours. As a direct consequence, officers testified that they were asleep in the Bronx Firehouse when the inappropriate sexual conduct occurred on August 19-20, 2004. Indeed, DeLuca and the others took steps to try and get away with the misconduct by having the Complainant come to the Firehouse after the officers had gone to sleep, and rushing her out after the sexual activity so she would not be seen. At the very least, it is recommended that an officer be awake and supervising each firehouse at all times.

However, while that recommendation should certainly be adopted, it is not the sole cause or solution to the problems the FDNY has experienced in these cases. Specifically, in the Tottenville incident, the officers in charge, (Capt. Sweeney, Lt. McFarland and Lt. Kane) were fully awake, indeed, they participated in, observed and/or covered-up the drinking and assault. In both the Tottenville and Bronx incidents, the length of the mutual tours demonstrated an opportunity for some members to pass the time by engaging in improper activities, creating an environment where the FDNY regulations were routinely ignored. As noted above, the FDNY has regulations that are

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<sup>73</sup> A Report was issued by DOI on March 24, 2004 regarding the Tottenville incident.

designed to protect the image of the FDNY. However, disregard for application of its own rules sends inconsistent messages to its members and may encourage individuals to violate FDNY regulations. That may also explain why senior members at the Firehouse challenged Captain Stark when he directed that no one use the computer to download pornography and why, despite his vigilance, members continued to do so and to post inappropriate pictures around the Firehouse. A breakdown in enforcement of the regulations also occurred in the Tottenville Firehouse, where drinking had taken place on various occasions and a serious assault took place on New Years Eve. And a cover-up of the misconduct took place in both the Tottenville incident a year ago, and again in the Bronx incident.

It is important to note, as we did in the Tottenville case, that not all members of the Bronx Firehouse participated in the misconduct. Thus, to be clear, the finding of this Report is not that all members used the Firehouse computer to look for pornography or liaisons, engaged in or knew about phone sex or sexual activity at the Firehouse, or disregarded regulations.

## **II. There Should be More Formal Training on the FDNY Regulations Regarding Company Journals; Housewatch**

The incident in the Bronx Firehouse revealed that the Company Journal was not being properly maintained, as was the case in the Tottenville incident a year ago. All of the members of Engine 75/Ladder 33 testified that they received little or no formal training on the FDNY regulations regarding maintaining Company Journals. All testified that they received “on the job” training from other firefighters, but most were unfamiliar with many of the basic rules.

Company Journals are important FDNY records, because they can, and should be, the most accurate day-to-day records of the business of FDNY firehouses around the City. The FDNY should conduct periodic audits of firehouse Company Journals and provide remedial training to its members where appropriate.

Rules and regulations that govern housewatch duty were once again violated at the Bronx Firehouse as they were in Tottenville, and the security of the Bronx Firehouse was compromised. The role that the housewatch officer performs is paramount to the security of the Firehouse, and security at firehouses has been a particular focus for the FDNY in recent years. Remedial training and re-enforcement of the housewatch rules should be provided.

## **III. Disciplinary Procedures**

Loscuito was hired at the FDNY subsequent to a drug conviction, and was arrested again on a drug charge after joining the Department. He was permitted to remain in the Department following that second incident. As a result of the second incident, he became subject to a Departmental stipulation that placed him on probation for two-years

during which time he could be terminated only for any misconduct involving drugs. He was not put on probation for any other type of misconduct. The adequacy and effectiveness of that should be considered. Indeed, in the New Years Eve Tottenville incident, various participants had multiple arrests and/or disciplinary records, including of a serious nature. The New York City Fire Department has a proud and successful history; its members are rightly revered as brave and heroic in the eyes of the public. The few individuals in the Department who would use a FDNY firehouse to engage in drinking, brawling, sexual misconduct, surfing the firehouse computers for pornography and liaisons, lying and other wrongdoing, should face serious consequences including termination where appropriate. To not do so, particularly in the case of recidivists, is sullyng the honorable reputation of the Department. There simply is no place for that kind of behavior in the Department and no excuse for it, including September 11.

## **APPENDIX I: List of Interviews conducted by DOI**

The Complainant	
Battalion Chief James Keene	Battalion 19
Captain John Stark	Engine 75
Lieutenant Michael Morrissey	Ladder 33
Firefighter Brian Gill	Engine 75
Firefighter John McDermott	Engine 75
Firefighter David Auld	Engine 75
Firefighter Edward Reilly	Ladder 33
Firefighter Alfred Ronaldson	Ladder 33
Firefighter Michael Essig	Battalion 19 Aide*
Firefighter Anthony Loscuito	Engine 75
Firefighter Christian Waugh	Ladder 33
Firefighter Tony DeLuca	Ladder 33
Firefighter Matthew Bruckner	Ladder 33**
Firefighter John Hemsley	Engine 75
Firefighter Paul Murphy	Fleet Services
Mechanic George Hicks	Fleet Services
Firefighter Tony DeLuca	Ladder 33
Firefighter Michael Kentner	Ladder 33

\* Firefighter Essig was assigned to Ladder 46 and was working a temporary detail at Battalion 19 on August 19 – 20.

\*\* Firefighter Bruckner was assigned to Engine 75 and was working a temporary detail at Ladder 33 on August 19 – 20.

## **Exhibits**

- 1. FDNY Regulations for the Uniformed Force**
- 2. All Unit Circular (“AUC”) 268a**
- 3. Crime Scene Photographs**
- 4. Diagram of the Firehouse**

Special thanks to the DOI Office of the Inspector General for the FDNY, DOI Chief of Staff Robert Roach and the Detective Squad at DOI for their work on this investigation.