

*Fire Dep't v. Patterson*, OATH Index No. 217/89 (Aug. 21, 1989), adopted, Comm'r Dec. (Sept. 8, 1989): firefighter found to have made offensive statements which disrupted sensitivity training session and to have attempted to incite fellow firefighters to disrupt subsequent sessions. Loss of ten days pay imposed as the penalty.

THE CITY OF NEW YORK  
OFFICE OF ADMINISTRATIVE TRIALS  
AND HEARINGS

P R E S E N T : DIERDRA L. TOMPKINS  
Administrative Law Judge

In the Matter of Disciplinary Proceedings by the  
NEW YORK CITY FIRE DEPARTMENT,

against

REPORT AND  
RECOMMENDATION

RICHARD PATTERSON,  
Firefighter,  
Respondent,

Index No.  
217/89

Pursuant to Section 15-113 of the New York  
City Administrative Code and Section 75  
of the New York State Civil Service Law.

TO: HONORABLE JOSEPH F. BRUNO  
Commissioner  
New York City Fire Department

By your designation, the above-captioned matter was referred to me to hear and report with recommendations in accordance with section 15-113 of the New York City Administrative Code and section 75 of the Civil Service Law. Transmitted herewith is the record consisting of the transcript of the hearing and the exhibits referred to therein.

The hearing was conducted on May 4 and June 26, 1989. The Fire Department ("Department") was represented by Donzell Tucker, Esq. The respondent appeared and was represented by Michael Block, Esq.

The respondent is charged with conduct bringing reproach or reflecting discredit upon the Department and which "may cause

sexual harassment," in that he disrupted a sensitivity training seminar at Engine Co. 46, Ladder Co. 27, on June 9, 1988. Respondent is additionally charged with violating his oath of office. The Department presented Ralph Garcia, social Worker, and Lieutenant Peter F. Keller. The respondent testified in his own behalf and presented Firefighter Robert Kirschner.

#### SUMMARY AND ANALYSIS OF THE EVIDENCE

This section includes a summary of the relevant testimony offered in this proceeding. For a complete statement of the testimony, please refer to the transcripts (hereafter "Tr. I and II") which are attached to this report.

This case involves two separate sensitivity sessions, both of which respondent intruded upon and neither of which he was scheduled to attend. The Department charged respondent with respect to his conduct at the afternoon session, which occurred at a firehouse located at the intersection of Washington Avenue and the Cross Bronx Expressway. However, in order to place events at that session in context, those at the prior session are relevant.

Ralph Garcia testified that he conducted sensitivity training workshops on June 9, 1988. The training was designed to assist male firefighters in coming to terms with the assimilation of females into their ranks. The ground rules for the sessions were as follows. Firefighters were encouraged to speak freely without fear of reprisal by the agency. According to Mr. Garcia, he made it clear that he would not be reporting back to the Department. He also testified that superior officers at the firehouse were responsible for maintaining order, decorum and discipline. The sensitivity trainers were not required to tolerate personal attacks (Tr. I 6-7, 33-35, 46).

The morning session progressed unremarkably for about 45 minutes, when respondent, who was late, entered the room. Mr. Garcia testified that respondent's late arrival was only a mild distraction. Respondent sat down and asked Mr. Garcia a series of questions about quotas,

affirmative action and what Mr. Garcia thought was fair. Mr. Garcia indicated that he had covered that material earlier, and that he did not want to go over it again. Mr. Garcia told respondent that he would speak to him afterwards about any questions respondent might have. Nevertheless, respondent continued to interrupt periodically over the following 45 minutes. Mr. Garcia characterized such interruptions as mild nuisance and testified that each time he asked respondent to wait, respondent was "pretty cooperative."

At the end of the session, respondent approached Mr. Garcia and repeated his questions relating to quotas and affirmative action. Respondent indicated that he had been "kept out of the force for a number of years because of the women" and wanted to know if Mr. Garcia thought this was fair. He questioned Mr. Garcia further about his individual politics and beliefs and asked "who did [Mr. Garcia] think he was to come in and say things like this, or words to that effect. Mr. Garcia answered some of respondent's questions and deflected "a lot of the more personal ones" (Tr. I 7-9, 41-45).

Mr. Garcia testified that respondent was intense, pointed, direct and angry; however, he was not abusive at the time. Then, an "older firefighter" entered the kitchen where the session was being held, walked past Mr. Garcia and asked, using some profanity, if he was one of the sensitivity trainers. Mr. Garcia testified that this was not unusual behavior for these sessions and he did not read any hostile intention on the firefighter's part. Thus, Mr. Garcia identified himself as a trainer and the firefighter said, "Well, then, fuck all you sensitivity trainers, fuck Columbia University and fuck the horse you rode in on." Mr. Garcia testified that the comments seemed to spur respondent on and he began to get angrier and more personally abusive. He called Mr. Garcia a "cocksucker," "motherfucker," "scumbag" and a "communist." Mr. Garcia decided to leave and respondent followed him onto the apparatus floor. Respondent yelled at Mr. Garcia, "Why don't you fuck Brenda Berkman and

I hope you both die of AIDS." Mr. Garcia testified that he was a "little bit shaken to say the least" and departed for the afternoon session at Engine Co. 46 (Tr. I 9-10, 45).

Mr. Garcia arrived at Engine Co. 46 at approximately 1:55 p.m. He testified that roughly one-hour into the session, respondent entered. He remained between the entrance to the kitchen and a table and scanned the room. Mr. Garcia said, "Oh boy, look who's here," or words to that effect. Respondent fixed his eyes on Mr. Garcia, pointed and said, "Yeah, there he is, there's the communist, the liberal, the guy who believes in affirmative action." Respondent used profanity and Mr. Garcia said that he could not believe respondent was there "doing this." As respondent's anger level rose, Mr. Garcia kept quiet and averted his eyes. He scanned the room, looked at the lieutenant, looked down, and looked for a means of escape.

At some point, respondent picked up a training schedule and announced to the other firefighters present that it belonged to Mr. Garcia and that he would make it his job to "hound" Mr. Garcia and follow him to all training sessions in order to make him stop. He then exhorted the other firefighters to "band together" and join him in following Mr. Garcia. He pointed out where he thought Mr. Garcia would be the following day and asked if anyone could go there since he had to work. Respondent then tried to distribute photocopies of the schedule, berated the training package, verbally abused Mr. Garcia, repeated that the men should get together to follow Mr. Garcia and then departed (Tr. I 11-14, 47-57). According to Mr. Garcia, respondent's tone of voice was "deep, very focused and intense," and had no variation in pitch.

Afterward, Mr. Garcia sat "motionless" for a couple of seconds. The firefighters present started laughing and pointing to a window above Mr. Garcia's head. (Lt. Peter Keller testified that respondent had gone to the rear of the firehouse and started yelling something outside the window - "Why don't you fucking leave" or something to that effect (Tr.

I 63)). Mr. Garcia could neither see nor hear what was going on outside the window. In any event, when the laughing stopped, Mr. Garcia stated that he could not believe that he had gotten threatened like that, at which point, Lt. Keller said, "Oh no, Oh no. I'm a witness to the fact that he never actually physically threatened you. He was simply an American expressing his First Amendment rights or his freedom of speech" (Tr. I 13).

Mr. Garcia, who was "very shaken, very scared," departed. He was unable to regain his composure, therefore he canceled the session and returned to his office. Mr. Garcia testified that he did not report the incident to the Department, explaining that "that sort of thing goes with the territory. in the mental health field. He testified that once he felt he was out of danger, he did not want to make "a case" out of things. He did not want to give respondent any more reason to become angrier, and Mr. Garcia was concerned about the integrity of the project. He had no intention of taking anything out on respondent personally (Tr. I 13-22).1

Lt. Peter Keller corroborated Mr. Garcia's testimony with respect to the fact that when respondent entered the afternoon session, he was immediately verbally abusive. However, the lieutenant testified that such abuse was directed at the program and not Mr. Garcia personally. The lieutenant explained that respondent's comments were directed at Mr. Garcia only because Mr. Garcia was a symbol of the training program (Tr. I 61-62, 69). Lt. Keller corroborated the fact that respondent, who had the training schedule in his hand, announced that he was going to follow Mr. Garcia around until he stopped harassing the firefighters with these training sessions (Tr. I 61, 69-70). According to the lieutenant, respondent's voice was loud, excited, agitated and angry. Respondent was ~pretty upset.. Lt. Keller at first thought that respondent's behavior was a planned confrontation, part of the sensitivity training; however, the lieutenant realized that such was not the case when Mr. Garcia, who looked concerned, started to back off (Tr. I 62-63, 74).

Lt. Keller admitted that he took no action against respondent, who made no threatening moves toward Mr. Garcia. Respondent was "just loud and verbal" and the lieutenant felt that if he made any move toward respondent, the possibility existed that respondent

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1 Subsequent testimony by Lt. Keller established that he reported the incident as part of his duties. could have started swinging." The lieutenant decided to let respondent "blow off steam" (Tr. I 64).

Firefighter Richard Kirschner, a member of Engine Co. 96, testified in respondent's behalf. On June 9, 1988, he attended the sensitivity training session, which began at 10:00 a.m. According to the firefighter, Mr. Garcia told the group that he realized there might be some anger in the room and that anything the men said was "strictly to be held in the walls of the kitchen," there would be no reprisals for anything said. Mr. Garcia encouraged interaction and feedback.

Firefighter Kirschner described the session and the information imparted (Tr. II 5-7) and stated that several times the session became heated and very emotional. Close to the end of the session, respondent entered and "perhaps" asked Mr. Garcia questions. According to Firefighter Kirschner, respondent did nothing unusual in light of what the others were doing. He did not intimidate Mr. Garcia nor did he verbally attack him. Firefighter Kirschner could not say for certain whether respondent used profanity toward Mr. Garcia but said it was possible (Tr. II 17).

At some point "somebody else," an ambulance driver who had dropped off an injured member, "perhaps" used profanity toward Mr. Garcia, as he was departing (Tr. II 10-11, 15). This individual said something "to do with the horse he rode in on." At some point, respondent, who had missed most of the session, asked Mr. Garcia where he was going next. Mr. Garcia said Engine Co. 46 and respondent asked if he could attend the session. Mr. Garcia said it was a free country (Tr. II 11 15).

Firefighter Kirschner testified that respondent did nothing to abuse Mr. Garcia or the Department. "Any emotion that was vented in that room strictly dealt with the issues;" no anger was ever directed at Mr. Garcia personally. According to Firefighter Kirschner, Mr. Garcia "was very strong in his viewpoint," used profanity and was trying to let the members "know how he felt" (Tr. II 12-14).

Respondent testified that on June 9, 1988, he was late leaving quarters and had entered the kitchen where the sensitivity training session was in progress. As respondent entered the kitchen, he observed that a lecture of "some sort" was being conducted (Tr. II 23). Respondent stood "some distance" from Mr. Garcia, and listened to "what seemed to be a heated, but open exchange of ideas." At some point, a member asked Mr. Garcia his personal views on the "lecture" and Mr. Garcia said, among other things, that the "merit system was going to gradually be replaced. by a quota or lottery system, a view with which respondent did not agree (Tr. II 24-25).<sup>2</sup>

Respondent recalled that Mr. Garcia glanced at his watch and said that he was due at another session. Respondent said that he was interested in hearing the lecture and asked Mr. Garcia if it would be all right if he arranged his own transportation and attended. Mr. Garcia told respondent it was a free country and he could not stop respondent from doing whatever he wanted to do. Respondent admitted that he had no permission from any of his

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<sup>2</sup> Referring to the demise of the merit system and the overturning by the Court of Appeals of the revised test for female firefighters.

commanding officers to attend the training session at Engine Co. 46. Respondent then contradicted himself and testified that he received permission from a captain whose name he could not recall. Respondent noted that he had checked a master schedule and was aware that no other sessions were scheduled at his quarters (Tr. II 28, 38-39, 41, 46); therefore, he would not receive sensitivity training.<sup>3</sup>

Respondent denied ever using profanity toward or threatening Mr. Garcia. However, he testified that profanity was used during the session by some of the members as well as by Mr. Garcia. Respondent recalled that an unidentified firefighter entered the kitchen at some point and directed profanity toward Mr. Garcia, who did not appear upset; it seemed to roll off his back" (Tr. 30, 36).

In any event, after the morning session, respondent went to a restaurant, had lunch and then drove to Engine Co. 46, where he told the house watchman that he was a firefighter and wanted to use the bathroom (Tr. 33, 44). Respondent claimed that he never told the watchman that he wanted to attend the sensitivity session because he was "a little embarrassed to admit...that [he] wanted to attend the session" (Tr. 34, 42). After entering the firehouse, respondent went to the rear of the apparatus floor, stood by the kitchen door, which was open, and heard the same comments and "attacks" on his job and the future of the merit system. Respondent waited until Mr. Garcia opened the floor for discussion, then entered the kitchen.

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<sup>3</sup> Apparently respondent was scheduled to attend a Phase 2 session, which was to be held in October 1988. Respondent claimed not to have been aware of any such session (Tr. II 29).

Respondent informed the members that Mr. Garcia had just left his firehouse and that what he was telling them was incorrect. He told the members that he thought it was "bullshit" that they had to listen to inaccurate information. According to respondent, Mr. Garcia did not respond, but simply looked at the members as though awaiting additional comments. Respondent then left the area (Tr. 35).

I found Mr. Garcia quite credible. He was an articulate witness, who had no apparent motive to testify falsely and whose testimony was detailed, probative and plausible. Mr. Garcia stated that he did not report the incident because he had nothing personal against respondent and because he did not wish to jeopardize the integrity of the training program by making a "case" out of this, a statement borne out by the testimony of Lt. Keller, who reported respondent's behavior to the Department. Lt. Keller's testimony appeared to be credible generally, though I was convinced that he tried to minimize respondent's conduct.

On the other hand, I found Firefighter Kirschner's testimony less than credible and did not credit it. His attempts to minimize respondent's conduct were obvious. I also found respondent's testimony incredible and contrived. I was not convinced that his views on women in the ranks is as tempered as he would have this tribunal believe or that he was so interested in receiving the sensitivity training that he felt compelled to go to the afternoon session for fear he might not receive any training at all.<sup>4</sup> The fact that respondent's name did not appear on a schedule is inconsequential. The Department clearly had a planned

<sup>4</sup> Respondent testified about his views on those who wish to work for the Department as firefighters and stated that it was never his feeling that women should not be employed as firefighters.

schedule and it is unlikely that it would choose to single out respondent not to receive the training. Respondent was required to wait his turn or to inquire of his superiors when he would receive training. His suggestion that he had "permission" from Mr. Garcia to attend the afternoon session was a ludicrous and gross mischaracterization of the

exchange between these two men. Respondent's testimony in this instance indicates just how distorted his view of events was and detracted from his overall credibility. I was also not convinced that some unnamed captain gave respondent permission to attend the session, especially in view of his contradictory testimony on this issue.

Respondent's claim that he first went to lunch then to the second session, appeared to be designed to convince this tribunal that his primary focus was not on Mr. Garcia. I was not persuaded. Nor was I persuaded that respondent told the watchman at the afternoon session that he wanted to use the bathroom because he was too embarrassed to let the watchman know that he wanted to hear the lecture. Respondent was unhappy with the prospect of being subjected to these sensitivity training sessions and went to the afternoon session to make his views known. Respondent was off-duty and lied to the watchman about his motives in order to gain access to the sensitivity session, which was in progress.

The fact that Lt. Keller felt compelled to report respondent's conduct is evidence that respondent's verbal abuse was as described by Mr. Garcia. The lieutenant stated that Mr. Garcia appeared worried during respondent's verbal attack and backed off as result. Respondent's counsel tried to show that Mr Garcia overreacted by suggesting that the latter was ill prepared to handle the anger he would encounter from the firefighters. I was not convinced. Mr. Garcia's credentials were impressive (Tr. I 4-5). It is unlikely that a trainer, experienced and educated in conducting these sessions, as was Mr. Garcia, would have been as shaken as he was unless something extraordinary had occurred. Thus, I accept the facts as stated by Mr. Garcia.

Nevertheless, respondent's counsel argued that respondent was merely exercising his First Amendment right of free speech, and therefore, he never should have been charged with misconduct. In determining a public employee's rights of free speech, the task is to arrive at "a balance between the interests of the [employee] as a citizen, in commenting upon

matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public service it performs through its employees." *Connick v. Meyers*, 461 U.S. 138, 142, 103 S. Ct. 1684, 1687 (1983), and cases cited therein. Thus, the threshold question in applying this balancing test is whether respondent's speech may be "fairly characterized as constituting speech on a matter of public concern." *Connick*, 461 U.S. at 146, 103 S. Ct. at 1690. The determination depends on the content, form, and context of a given statement, "as revealed by the whole record. *Id.*, at 147-148, 103 S. Ct. at 1690. "The inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern. '[D]ebate on public issues should be uninhibited, robust, and wide-open, and ... may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials.'" See *Rankin v. McPherson*, 483 U.S. 378, 107 S. Ct. 2891, 2898 (1987). This tribunal will address the evidence as it pertains to statements made at the afternoon session only.<sup>5</sup> Respondent's statements at the afternoon session were an expression of his views on a matter of public concern. Mr. Garcia testified as follows:

"He [respondent] pointed and he said...there's the communist, the liberal, the guy who believes in affirmative action....He continued to use profanity....He then began referring to some paper he had in his hands. He said this is my [Mr. Garcia's] schedule....He then exhorted the men to band together...(Tr. I 11-12).

Respondent's speech, in context, reveals that he was expressing his views on affirmative action, a matter of public concern, while at the same time criticizing Mr. Garcia for his opposing views. The statements are protected speech in the first instance. However, respondent's interest in making his views known must be balanced against that of the Department in promoting its legitimate mission in conducting these mandated sensitivity sessions in an effort to forestall sexual discrimination in the ranks of uniformed members. In this respect, the manner, time and place of respondent's expression are relevant. It must be considered whether respondent's statements at the afternoon session

had the potential to impair discipline by superiors or harmony among coworkers, had a detrimental impact on close working relationships or impeded the performance of the speaker's duties or interfered with the regular operation of the enterprise. The focus is on the effective functioning of the Department's enterprise. *Rankin*, 483 U.S. at \_\_\_\_, 107 S. Ct. at 2898-99.

5 Although the statements respondent made about Mr Garcia following the morning session (i.e., "Cocksucker," "motherfucker," "scumbag," "communist," and "Why don t you fuck Brenda Berkman and I hope you both die of AIDS."), were clearly disciplinable th Department charged respondent with misconduct only as to the afternoon session.

In this case, the balance should be struck on the side of the Department. Respondent did more than express an unpopular opinion in a distasteful manner; he disrupted the session and encouraged his fellow firefighters to join him in this venture by stopping these sensitivity sessions altogether. In this respect, respondent undermined and impeded the Department from carrying out its mandated mission. The limited First Amendment interest here does not require the Department to tolerate behavior which it reasonably believes would undermine its authority or impede its operations or which actually accomplishes those ends. Here, the afternoon session was disrupted and ended prematurely. Accordingly, I find that respondent's interest in expressing his views during that session, when weighed against the Department's stated interest, is not protected speech; and therefore, his conduct is disciplinable.

Respondent also relied on the fact that feedback was encouraged to justify his behavior. Respondent's conduct here exceeded the bounds of acceptable comment in the training sessions. While respondent may have had the right to criticize the material and the program, he had no right to berate and intimidate Mr. Garcia to the point where Mr. Garcia reasonably feared for his safety. Respondent's conduct exceeded permissible comment because it was threatening. It impeded the Department's ability to conduct the sensitivity sessions and brought reproach and reflected discredit on it. Therefore, charge 1 is sustained.

Charge 2 alleges that respondent's conduct as found in charge 1 "might cause sexual harassment." Regulation 25.1.10, cited by the Department, provides in relevant part, that "Members shall not engage in any activity, whether by actions, speech, writings or

dissemination of material which may cause sexual harassment as defined in Title VII of the Civil Rights Act of 1964 [29 C.F.R. 1604.11 (1986)] and Mayoral Directive 80-5 ...." The regulation is very broad and appears to provide a basis for the agency to sanction conduct which has no more than the potential for causing sexual harassment. The regulation is further defined in the Addendum to PA/ID 1-77R (March 31, 1987) (cited in the regulation), which states that the prohibited behavior is that "which conveys a message to ...firefighters that firefighting is a man's job, or that women are not wanted or will be made miserable on the job." Although the regulation is broad and may cover protected speech or conduct, that is not the case here, for the reasons stated above.

The import of the rule is that members must refrain from conduct, be it spoken, written, or physical, which encourages or foments sexual harassment or discrimination (e.g., by posting inflammatory flyers or encouraging male firefighters to play practical jokes on women members). The record establishes that the Department waived strict application of the regulation in the context of these sensitivity training sessions in an effort to effectuate its court mandated mission, and permitted members to freely express their feelings against the material and the program. Nevertheless, in the circumstances presented, the regulation is fairly applied to respondent, whose behavior exceeded permissible bounds. The sessions were designed to ease the assimilation of women into the ranks of firefighters and to discourage sexual harassment. Given the purpose of these training sessions, respondent's conduct may fairly be seen as having frustrated the Department's goals and encouraged the very harassment the training

was designed to erase. Without the successful conduct of these sessions, the Department 'S goals will not be realized. This tribunal finds that the evidence supports charge 2 by a preponderance.

Charge 3 alleges a violation of respondent's oath of office. Since respondent has been found guilty of charges 1 and 2, he is **also found** to have violated his oath of office. See Commissioner's Decision in *Fire Department v. Lumsden*, OATH Index No. 265/85 (October 2, 1985).

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the foregoing analysis, I find that:

1. On June 9, 1988, respondent engaged in conduct which brought reproach and reflected discredit on the Department in that he disrupted the afternoon sensitivity training session.
2. Respondent engaged in conduct which might cause sexual harassment in that by words and actions he conveyed to other firefighters that women are not wanted among uniformed members.
3. Respondent violated his oath of office.

THEREFORE:

I find respondent *guilty* of charges 1, 2 and 3.

#### RECOMMENDATION

Upon making the above-noted findings of fact, I reviewed respondent's personnel file, which revealed that he was appointed on July 11, 1984 and has no prior disciplinary record

Nevertheless, in this proceeding, respondent has been found guilty of disrupting sensitivity training sessions by hurling verbal epithets at the trainer. Moreover, respondent intimidated the trainer by threatening to follow and in fact following him to a subsequent session where he continued the abuse. Respondent's misconduct was outrageous, reprehensible, sophomoric and certainly cast the Department in a poor light.

This tribunal is not unmindful that the process of integrating women into the Department as firefighters has been long, difficult and controversial, and that it has engendered deep rooted resentment in the ranks of male firefighters. However, that in no way excuses respondent's unseemly outburst. There is a distinction between validly expressing one's views in a constructive, even vehement and caustic manner, and engaging in vicious intimidation, personal abuse, and disruption. Respondent knowingly crossed the line in this case.

Respondent's misconduct can neither be condoned nor tolerated and warrants a harsh penalty. Although the misconduct warrants a more severe suspension, this tribunal is constrained to recommend the maximum period permitted under the Administrative Code, which is ten days' suspension without pay. I so recommend.

Respectfully submitted,

DIERDRA L. TOMPKINS  
Administrative Law Judge

DATED: NEW YORK, NEW YORK  
AUGUST 21, 1989

Comm'r Decision (Sept. 9, 1989)

On July, 1988, Respondent was served with charges alleging that, on June 9, 1988, he violated the following Regulations for the Uniformed Force:

Section 25.1.3: Conduct bringing reproach or reflecting discredit upon the Department.

Section 25.1.10: Conduct that may cause sexual harrassment.

Section 25.1.1: Oath of Office.

A hearing on the charges was held before Administrative Law Judge Dierdra L. Tompkins on May 4 and June 26, 1989. In her Report and Recommendation, dated August 21, 1989, Judge Tompkins found the Respondent guilty of all charges and reconmended that he be suspended without pay for ten (10) days.

I have carefully reviewed Judge Tompkins' Report and Recommendation, as well as the trial transcript, and the post-hearing submission of respondent's counsel. I accept Judge Tompkins' Findings of Fact and concur with her conclusion that respondent is guilty of all charges.

Specifically, I agree that Firefighter Patterson's conduct went beyond even the liberal limits tolerated within the context of sensitivity sessions into the realm of personal threat and intimidation of the Department's sensitivity trainer. This conduct impeded our training operations and discredited the Department in the eyes of both members and nonmembers. Further, Firefighter Patterson's exhortation to other members to follow the trainer to future sessions in an effort to stop them altogether was conduct intended to "encourage the very harassment that the training was designed to erase."

With respect to the arguments raised by respondent's counsel, I reject the suggestion that conduct reflects discredit upon the Department only if it is observed by non-members. The misconduct of one member reflects discredit upon his superiors and peers, and tarnishes the image of that unit in the eyes of the entire Department. Certainly, the toleration by the Department of misbehavior would discredit the Department both within and without, and diminish the self-image of its members as well.

I also disagree with respondent's assertion that there was no evidence supporting Mr. Garcia's perception of danger. I note particularly that Lieutenant Keller's reason for taking no action against respondent was that the lieutenant felt that if he made any move respondent might

start swinging.

I concur with the judge that such egregious misconduct cannot be tolerated and merits a severe penalty. Inasmuch as I am limited by the N.Y.C. Administrative Code to the imposition of a fine of ten (10) days' pay, said penalty will be imposed.

By order of:  
Joseph F. Bruno  
Fire Commissioner  
September 8, 1989