



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, Corporation Counsel

Press Release

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For Immediate Release

**NEW YORK CITY LAW DEPARTMENT PREVAILS IN TWO CASES INVOLVING
OFFICERS DISMISSED FOR DRINKING WITH POLICE OFFICER JOSEPH GRAY**

***STATE SUPREME COURT RULES THAT NYPD PROPERLY DISMISSED TWO PROBATIONARY POLICE
OFFICERS.***

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New York, July 17, 2002 -- The New York City Law Department has won two cases involving police officers who were dismissed for drinking in a parking lot near their precinct with another police officer, Joseph Gray. Former Officer Gray, who later drove his minivan while intoxicated, killed three members of a Queens family last August. He was recently convicted of manslaughter.

In both decisions, issued on June 12 and July 3, the Supreme Court, New York County, ruled that the New York City Police Department properly terminated the probationary employment of police officers who had been drinking with Officer Gray.

Edward Sills Case Background

Officer Edward Sills had previously been a tenured police officer, but he agreed to be placed on dismissal probation after pleading guilty to driving under the influence of alcohol in June 2000. Sills then admitted that on August 4, 2001, he was drinking beer while off-duty in a parking lot used by members of the 72nd Precinct in Brooklyn with former Officer Gray and others. After consuming the alcohol, Sills drove himself home -- putting himself and the public at risk.

The NYPD argued that Officer Sills, as a probationary police officer, could have been and was dismissed for any good-faith reason. Officer Sills alleged that he should be considered "disabled" as an alleged alcoholic and claimed that he was targeted due to the publicity stemming from Officer Gray's highly-publicized conduct.

Following his June 2000 guilty plea to driving under the influence of alcohol, Sills could have been terminated from the NYPD, but was instead given the option to continue serving as a police officer in exchange for agreeing to relinquish his tenured status and be placed on probation for one year. The drinking incident in the parking lot occurred within that one-year period. As the Court stated, Sills "ignored his history with alcohol; he further didn't appreciate the fact that, despite this history, he was given a second chance. That second chance was being put on probation."

The Court's decision to dismiss the case was based on a long line of legal precedent that holds that public officers may be dismissed during their probationary period for any reason, as long as the reason is not discriminatory or otherwise contrary to law. In her court opinion, Justice Sherry Klein Heitler noted that the NYPD had a legitimate reason to terminate Sills, who admitted to driving home after drinking and may have "potentially endangered innocent lives."

Justice Heitler also observed, "When an officer's conduct, even while off-duty, diminishes the public's respect for the police force, it undermines the community's confidence in their function" and further noted that "because policemen enforce the law, they must conduct their lives in a manner which never calls into question their respect for the law. To act otherwise undermines the dignity of the police force."

The Court rejected Sills' claim that he was disabled due to his alleged alcoholism, agreeing with the NYPD that Sills did not have a disability within the meaning of the New York State Human Rights Law because he was not a rehabilitated or rehabilitating drug abuser. The Court held that, as "an alcoholic who continues to drink and is not in a rehabilitation program, [Sills] cannot claim protection under [the Human Rights Law]."

Officer Sills was represented by Howard Tanner of the law firm Tanner & Ortega, LLP. The NYPD was defended by Assistant Corporation Counsel Edward Shin of the New York City Law Department.

John Welsh Case Background

Probationary Police Officer John Welsh was 15 months into his two-year probationary term when he and other officers, including Officer Gray, began drinking in a parking lot across from the 72nd Precinct and then moved to a nearby club.

In upholding the NYPD's decision to terminate Officer Welsh, the Court relied on well-established case law which states that probationary police officers may be dismissed during their probationary period so long as that decision is not made in bad faith. Justice Bruce Allen of State Supreme Court noted in his opinion that the mere fact that this case was associated with a "highly-publicized and tragic incident" does not render the NYPD's decision to dismiss Officer Welsh as improper.

Justice Allen commented that this case was not materially different from the case brought by Probationary Officer Craig Hildebrand, whose dismissal the judge upheld in March 2002. (Officer Hildebrand had been drinking in the same parking lot with Officers Gray, Sills and Welsh and was dismissed by the NYPD.) Justice Allen rejected the claim made by both Officer Hildebrand and Officer Welsh that they were terminated based on the negative publicity which arose from Officer Gray's incident. In his opinion in *Hildebrand*, Justice Allen noted, "Given the importance of maintaining public confidence in police officers, it was neither irrational nor suggestive of an improper motive for [the NYPD] to act in reaction to the highly publicized events of the day."

Officer Welsh was represented by Rosemary Carroll of the law firm Carroll & Friess. The NYPD was defended by Assistant Corporation Counsel Blanche Greenfield of the New York City Law Department.

Michael A. Cardozo, Corporation Counsel of the City of New York, said: "Public employees, especially those in the uniformed services, must always exercise sound judgment to ensure the safety of the public. It is not acceptable for New York City police officers to consume alcohol in a parking lot near their police precinct and, in the process, risk putting the public at risk."

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 100,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

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