

**NEW YORK CITY DEPARTMENT OF  
INVESTIGATION**



**A Report to Mayor Michael R. Bloomberg  
and  
Commissioner Nicholas Scoppetta**

**The Department of Investigation's Examination of  
the Circumstances Surrounding the Assault of a  
Firefighter and Subsequent Cover-up at the New York  
City Fire Department Engine Company 151/Ladder  
Company 76 on Staten Island**

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DOI Commissioner**

**March 24, 2004**

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## INTRODUCTION

This Report summarizes the Department of Investigation's findings to date relating to Firefighter Michael Silvestri's assault on Firefighter Robert Walsh with a metal chair on December 31, 2003 inside a New York City Fire Department ("FDNY") firehouse located at 7219 Amboy Road, Staten Island ("the Firehouse"). At the time, Firefighters Silvestri and Walsh were assigned to Engine Company No. 151 ("Engine 151") and Ladder Company No. 76 ("Ladder 76"), respectively, both of which are housed in the Firehouse. This Report concludes that in the hours following the assault, members of the Firehouse sought to conceal this incident in violation of FDNY regulations and/or state criminal statutes by: (a) lying about and failing to report the cause and nature of Walsh's injuries to various FDNY officials; (b) making a false entry in the Firehouse company journal and causing other false entries to be made in the company journal and other FDNY records; and (c) causing false entries to be made in the records of Staten Island University Hospital where Walsh was taken for treatment. Moreover, members of the Firehouse possessed and consumed alcohol in the Firehouse on December 31, 2003, in violation of FDNY regulations, and failed to report the presence of alcohol in the Firehouse, also in violation of FDNY regulations. The investigation further revealed that alcohol had been present in the Firehouse on prior occasions.<sup>1</sup>

This Report is based on, *inter alia*, interviews, FDNY records and other documentary evidence, videotaped evidence, medical reports and a physical inspection of the Firehouse – all obtained in connection with this investigation. This investigation is being conducted in conjunction with the Richmond County District Attorney's Office and the New York City Police Department Detective Squads assigned to DOI and the 123<sup>rd</sup> Police Precinct on Staten Island.

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<sup>1</sup> This Report does not pertain to any other FDNY firehouse or any other member of the FDNY not otherwise discussed herein. Moreover, wrongdoing is not alleged or substantiated as to everyone who was a member of Engine Company 151/Ladder Company 76 as of December 31, 2003.

## **BACKGROUND**

The central figures in the altercation and cover-up discussed in this Report are Firefighters Michael Silvestri,<sup>2</sup> Robert Walsh, Joseph Spitalieri, David Johnsen, Captain Terrance Sweeney, Lieutenants Raymond Kane and Gregory McFarland.<sup>3</sup> The following is a brief synopsis of the backgrounds of these key individuals based on FDNY records.<sup>4</sup>

### **Captain Terrence Sweeney**

Capt. Sweeney was the highest-ranking member of the Fire Department present when Walsh was assaulted. Sweeney had been working for the Fire Department for over twenty-five years at the time of this incident. According to Fire Department records, Sweeney had two convictions for alcohol-related offenses during his employment with the Fire Department, as well as a third arrest. In 1981, when he held the rank of Firefighter Grade 2, Sweeney was charged with Driving Under the Influence of Alcohol, Disorderly Conduct, and Resisting Arrest. He later pleaded guilty, paid a \$50 fine, and had his driver's license revoked for six months. In 1996, Sweeney, then a lieutenant, was convicted of Driving While Intoxicated. He was fined \$900 and his driver's license was suspended for six months. The Fire Department disciplined Sweeney for the 1996 arrest by revoking three days of pay and two vacation days. Moreover, in 1993, while he was a lieutenant, Sweeney was involved in a parking dispute in which he allegedly threw a brick through the window of a car, cutting the occupant. Sweeney was arrested and charged with Assault and Reckless Endangerment. This matter was subsequently adjourned in contemplation of dismissal. Sweeney was promoted by the FDNY to the rank of Captain in 1997 and was assigned to Ladder 76 in January 2000. In addition, while Sweeney was assigned to Ladder 26, the company received three unit citations in 1984, 1987

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<sup>2</sup> In March 2004, Firefighter (FF) Michael Silvestri was indicted on First Degree Assault and related charges for the attack on Walsh. Additionally, the FDNY filed administrative charges against Silvestri on March 16, 2004.

<sup>3</sup> The following members of the Firehouse agreed to be interviewed by investigators, but only with signed agreements that granted them use immunity for statements they made. They were Capt. Sweeney, Lt. Kane, FFs Johnsen, Spitalieri, Salvatore Velez, Michael O'Shea, Jeffery LaRosa, Steven Richards, Thomas Ferranti, Jeffery Tkachuk, James Tosach, John Treglia, Glen Midbo, Charles Wahren and Nicholas Mirto. Silvestri refused to be interviewed on advice of his counsel.

<sup>4</sup> For a complete list of the firefighters present at the Firehouse on December 31, 2003, and a list of the witnesses interviewed see Appendices I-III on pp. 25-28 of this Report.

and 1989. These citations were awarded to mark the meritorious service of the entire fire company. Following the New Year's Eve incident at the Firehouse, on February 10, 2004, Sweeney retired from the FDNY after being demoted to the rank of firefighter with a fine of one-year's salary which was approximately \$90,000.

**Firefighter Robert Walsh**

FF Walsh has worked for the Fire Department for over eight years. He has been assigned to Ladder 76 since 1998 and holds the title of Firefighter Grade 1 and, generally, he was assigned as a driver of the ladder truck. According to Fire Department records, Walsh was arrested in May 2000 for Driving Under the Influence of Alcohol. He subsequently pleaded guilty and received a conditional discharge and a \$300 fine. The Fire Department later penalized Walsh two days of annual leave.

**Firefighter Michael Silvestri**

FF Silvestri had been working for the Fire Department for over fifteen years at the time of this incident. He holds the title of Firefighter Grade 1, and he was assigned to Engine 151 in September 2002. DOI received no record of prior disciplinary incidents for Silvestri.

**Lt. Raymond Kane**

Lt. Kane, a fifteen-year veteran of the Fire Department, was assigned to Ladder 76 in October 2001. A lieutenant since 1998, Kane has never been disciplined by the Fire Department. In 1992, while Kane was assigned to Ladder 132, that company received a unit citation. It was reported to investigators that years ago Kane sustained serious burns on his legs while fighting a fire.

**Lt. Gregory L. McFarland**

A firefighter since 1980, McFarland was transferred from Ladder 82 to Engine 151 in June 1989. FDNY records indicate that he has three prior arrests, one of which was also the subject of a departmental disciplinary proceeding. While a civilian employee of the New York City Police Department in 1976, McFarland was arrested for Assault in the Third Degree and was found guilty of Harassment. In 1982, when he was a Firefighter 3<sup>rd</sup> Grade, McFarland was arrested for Driving Under the Influence of Alcohol, pleaded guilty to Disorderly Conduct, and received a \$250 fine. In 1986, when he was a Firefighter 1<sup>st</sup> Grade, McFarland was charged departmentally with Sexual Harassment, an alcohol violation, Assault, Engaging in an Altercation, Conduct Unbecoming a Firefighter, Conduct Reflecting Discredit on the Fire Department and Sexual Harassment, pertaining to an incident with a female firefighter, who was among the first class of women admitted to the Department. In that incident, McFarland tussled over a knife the female firefighter was using to remove a newspaper clipping she considered objectionable to women. She was cut with the knife during the scuffle and required five stitches. After an OATH trial, McFarland was found guilty on charges of Harassment and being Drunk While On Duty, and the OATH judge recommended

termination.<sup>5</sup> (There is no record of a criminal arrest or conviction pertaining to this matter). FDNY records indicate that, in lieu of termination, a penalty of a \$15,000 fine, one-year probation and a transfer to another engine company was imposed. In 1992, FDNY records indicate, McFarland was arrested on Staten Island for Assault and Reckless Endangerment. This matter was subsequently adjourned in contemplation of dismissal. McFarland was promoted to the rank of Lieutenant on September 10, 2001.

### **Firefighter Joseph Spitalieri**

FF Spitalieri was transferred to Ladder 76 in November of 2002 and was promoted from Firefighter Grade 3 to Firefighter Grade 2 one year later. He had been working for the Fire Department for a little over four years at the time of this incident. We received no record of prior disciplinary incidents for Spitalieri.

### **Firefighter David Johnsen**

FF Johnsen began working for the Fire Department in 1985 and was transferred to Engine 151 in 1990. We received no record of his ever being disciplined.

## **DESCRIPTION OF THE FIREHOUSE AND THE COMPANY JOURNAL**

The Engine 151/Ladder 76 Firehouse consists of two stories plus a basement that contains gym equipment. The Firehouse has one main entrance on Amboy Road. Upon entering the Firehouse, one must pass by the “housewatch booth,” a small partitioned area to the right of the front entrance. The firefighter assigned to housewatch duty must record the names of all visitors and FDNY personnel entering and exiting the Firehouse, as well as any significant events of the day. Fire Department Regulations for the Uniform Force (“FDNY Regs.”) require the recording of those daily events – both mundane and significant – to be made in a red, hardcover book called, the “company journal.” Section 15.2.1 of the Fire Department Regulations require that “company journal entries shall be an accurate and complete daily record of all matters affecting the interests of the Department, or the administration of units and personnel assigned thereto.” Journal entries should include all fire runs, roll calls, inspections, injuries and the time any member on duty enters or leaves, etc.<sup>6</sup>

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<sup>5</sup> OATH is the Office of Administrative Trials and Hearings.

<sup>6</sup> Investigators were unable to determine who was maintaining the company journal on the night of the assault, both from an examination of the journal and from interviews of firefighters. In addition, the journal for that evening and the next morning does not reflect certain entries that would have been required, and several entries are attributed to firefighters who say they did not make them. It was also discovered that many of the entries in the journal were not made by a firefighter assigned to housewatch duty at the time the entry was made, as FDNY regulations require. Regulation § 20.2.1 requires that “officers on duty shall be directly responsible for the proper supervision of members performing housewatch duties.” Indeed, it is unclear who was staffing the housewatch booth on the evening of December 31, 2003 and in the early morning of January 1, 2004. In fact, members of the Firehouse interviewed stated that often the person assigned to housewatch duty was not in the booth.

The ground floor of the Firehouse, referred to as the “apparatus floor,” is where the ladder and engine trucks are parked and bunker gear and other equipment are stored. In the rear of the apparatus floor, past the trucks and ladders, is the entrance to the kitchen/dining area, which is a long, narrow room – about 31 feet by 16 feet. Kitchen appliances are on the left hand side of the room. Two rectangular dining room tables are pushed together to make one long dining room table, which runs down the center of the room. There are dining chairs around the two tables. There are no walls or other obstructions to block one’s view of the entire room – from the kitchen cooking area to the dining area.<sup>7</sup>

In the rear of the kitchen is an entrance to a television room that has a fireplace, as well as several couches and chairs with pillows and comforters. Through that TV room is an entrance to a courtyard behind the Firehouse. The courtyard is not visible from outside the Firehouse and is not immediately visible when someone enters the Firehouse.

Also in the apparatus area is a concrete stairway that leads up to the second floor, which contains the company offices, showers, bunkroom with beds, chairs, a television and a washer/dryer. That staircase does not lead to/from the kitchen.

### **THE PRESENCE OF ALCOHOL IN THE FIREHOUSE ON DECEMBER 31, 2003**

On December 31, 2003, Firefighter Walsh began his tour at the Firehouse at 8:00 am, when he reported for duty at Ladder 76, which was under Captain Sweeney’s command. Both Sweeney and Walsh were scheduled to work a tour of duty that began at 9:00 am and concluded at 6:00 pm that day. At approximately 4:25 pm, Sweeney, Walsh and the other members of the companies returned from a fire run.<sup>8</sup> Between approximately 4:30 pm and 5:30 pm, the new shift of firefighters began to arrive for work to relieve the shift that had just returned from the fire run and was going off duty. Most notably, FF Silvestri arrived between approximately 5:00 pm and 5:15 pm, as did Lt. Raymond Kane, who was to relieve Sweeney of command of the Ladder Company. According to the company journal, Walsh was at the Firehouse, on duty and awaiting relief by another firefighter, when Silvestri reported for duty.

Sometime between 5:00 pm and 6:00 pm, Sweeney candidly stated, he gave Walsh money to buy beer for consumption by the people in the Firehouse. Sweeney told investigators he allowed beer in the Firehouse that day because they had returned from a fire run that afternoon, and because it was New Year’s Eve. Walsh left the Firehouse and returned with 30 cans of beer. Because Fire Department regulations prohibit the consumption of alcohol in firehouses as well as the consumption

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<sup>7</sup> See Attachment A for photos of the kitchen/dining area.

<sup>8</sup> Members of the Firehouse indicated they received relatively few calls for fire runs. According to FDNY information, Companies 151 and 76 are among the least busy companies in the City.

of alcohol by firefighters who are on duty or in uniform, the beer was concealed in a darkly colored, opaque plastic garbage bag that had been placed outside in the courtyard behind the Firehouse.<sup>9</sup> In order to further conceal the consumption of alcohol in the Firehouse, the firefighters did not drink the beer from the cans, but rather, poured the beer into large plastic cups in the courtyard and discarded the empty cans in the garbage bag. Thus, the beer cans were not brought into the Firehouse. Sweeney reported to investigators that, prior to the assault, he drank approximately three or four cups of beer in this manner, as did Walsh, but he did not keep “count” of how many cups of beer Walsh consumed. Sweeney maintained that, while other firefighters were drinking from the plastic cups as well, he could not remember which firefighters in particular were doing so. Sweeney said he remembered offering a beer to a young firefighter who was at the Firehouse that evening, but he said he did not remember either that firefighter’s name or whether he accepted the beer. Sweeney also informed investigators that the last time he went to the rear courtyard to get a beer that evening, he noticed there were a lot of empty beer cans in the plastic garbage bag where the beer was being concealed. Sweeney told investigators he was not paying much attention to who was drinking or how much alcohol was being consumed because he would be going off duty soon. Although it is unknown how many cups of beer Walsh drank, a blood test was performed later at the hospital, at approximately 7:00 pm. A toxicologist who analyzed the report from the blood test indicated Walsh had a blood alcohol content of .054%.<sup>10</sup>

When Lt. Kane reported for duty on December 31, 2003 at approximately 5:15 pm, he went upstairs to a second floor office in the Firehouse where he saw Sweeney doing some paperwork. Kane was Sweeney’s relief for the Ladder Company.<sup>11</sup> Kane candidly admitted to investigators that

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<sup>9</sup> Fire Department Regulations § 25.1.5 provides that “[m]embers in uniform, or when on duty, shall not at any time, indulge in, or be under the influence of intoxicating liquors.” Another regulation, All Unit Circular 202, titled, “Substance Policy: Drug/Alcohol,” dated February 1, 1996 (“AUC 202”), describes in detail FDNY policies, prohibitions, and penalties with respect to the consumption of alcohol by firefighters in uniform or on duty. (AUC 202 § 2.1). FDNY rules and regulations strictly prohibit the “use...or delivery of alcohol while on duty,” as well as the “use or possession of alcohol while in uniform or in any Department quarters” by firefighters who are off duty. (AUC 202 §§ 4.4 and 4.5). All members -- both fire officers and firefighters -- are required to immediately report any violation of these rules to a superior officer. Members who fail to make such a report may be subject to disciplinary action. (AUC 202 § 5.1). Officers have particular responsibilities for enforcing AUC § 202. Specifically, “Officers on duty will be held strictly accountable for compliance by their subordinates with these policies,” and they are subject to discipline if they fail to do so. (AUC 202 § 5.2). For example, if an officer discovers that an on-duty member has consumed alcohol in quarters, he must immediately relieve that member from duty; notify his superior officer; notify the Bureau of Investigations and Trials (BITS); and document this matter in the company journal, (AUC 202 § 5.6.1).

<sup>10</sup> Under the NYS Vehicle and Traffic Law, one is in violation of Driving While Impaired when operating a motor vehicle with a blood/alcohol level of .05 and above. (VTL §§ 1192 & 1195)

<sup>11</sup> At any given time, Engine 151 and Ladder 76 would have either a captain or lieutenant on duty and in charge. On December 31, 2003, Sweeney, during the 9:00 am tour (the day tour), was the ranking officer at the Firehouse and was in charge of the Ladder Company. At a fire, the Ladder and Engine companies have different functions and different staffing requirements. As Sweeney’s relief for the evening tour, Kane was scheduled to take charge of the Ladder 76 Company at 6:00 pm until 9:00 am the next morning. McFarland was taking command of the Engine 151 Company beginning at 6:00 pm.



Sweeney informed him that the two companies had just returned from a fire and there was beer in the Firehouse. Kane said he became concerned when Sweeney told him about the beer in the Firehouse because Sweeney would be leaving soon and Kane would then be in charge of the Ladder Company. Kane stated that despite those concerns, he neither checked the Firehouse to see where the beer was, nor did he determine who was drinking it. Kane admitted he was taking command knowing there was beer on the premises and took no action regarding its presence. He candidly stated his own conduct while on duty that night demonstrated “a serious failure” of supervision.

### **THE ASSAULT ON WALSH**

On December 31, 2003, between 5:00 pm and 6:00 pm, the firefighters of Engine 151 and Ladder 76 were scattered around the Firehouse – some were cleaning and inspecting the trucks, some were showering, others were watching television or exercising in the gym. At about 5:45 pm, Walsh, Sweeney, Spitalieri and Johnsen were sitting at the kitchen table talking. (Spitalieri was off-duty that day but had arrived at the Firehouse because he mistakenly thought he was scheduled to work the 6:00 pm tour). Other firefighters, including Steven Richards and Michael O’Shea, dropped in and out of the kitchen. Sweeney admitted that he and Walsh were drinking beer in the kitchen/dining area at that time. Walsh was still on duty until his relief arrived to replace him. According to Sweeney, at one point, Silvestri entered the kitchen, spoke to the others a bit and began to mix sangria using a pot and wooden spoon.<sup>12</sup> As previously mentioned, Sweeney stated various firefighters, who he asserted he could not identify, were drinking beverages from the plastic cups. However, Sweeney informed investigators that when he grabbed his last beer from the garbage bag in the courtyard, he noticed that many of the 30 cans of beer had been consumed and the empty cans were in the garbage bag.

Spitalieri admitted to being at the table in the kitchen with Sweeney, Walsh and Johnsen prior to the assault. But Spitalieri also stated he knew, saw and heard nothing about beer in the kitchen, courtyard or being consumed by anyone. He stated that he did see Sweeney and Walsh drinking from plastic cups. Spitalieri also stated he knows nothing about there being sangria at the Firehouse. Spitalieri indicated that while he was seated at the kitchen table prior to the assault, he did see Silvestri in the kitchen sink area, but he said he could not specify what Silvestri was doing because Walsh was blocking his view. (Sweeney stated that is when Silvestri was making the sangria).

According to Kane, when the “change alert” bell sounded around 6:00 pm (indicating the start of the next tour) he came downstairs from the second floor to give the Ladder 76 firefighters their assignments. Kane said he found Walsh in the kitchen and advised him of his assignment.<sup>13</sup> At the time, Kane said he observed Sweeney and Walsh sitting at the kitchen table with “big cups” in

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<sup>12</sup> Sweeney asserted that he did not know that FF Silvestri was going to make sangria in the Firehouse that afternoon, but he did not stop Silvestri. When asked by investigators why/how a firefighter could feel comfortable making sangria in a Firehouse in front of a captain, Sweeney indicated that he had permitted alcohol at the Firehouse in the past.

<sup>13</sup> Walsh was still on duty because his relief had not arrived.

front of them. Kane told investigators there were other firefighters in the kitchen/dining area, but he could not remember who they were or if they had been holding the “big cups.” Kane said he got a cup of coffee in the kitchen where, according to Sweeney, Silvestri was making the sangria in the pot. Kane told investigators that he remembered seeing Silvestri in the kitchen at this time, but asserted he could not remember what Silvestri was doing. Kane then left the kitchen.

At 6:10 pm, Firefighter Salvatore Velez arrived at the Firehouse and went into the kitchen where he found Spitalieri, Sweeney, Johnsen, Silvestri and Walsh either sitting or standing. Velez claims he did not observe anyone drinking beer or sangria at the time. Around that time, the conversation around the kitchen table turned to Elvis Presley, and Walsh and Silvestri began to argue about the date of Presley’s birthday. Sweeney said the argument began around 6:20 pm and that Silvestri did not appear to be intoxicated at the time. As the bickering continued, Walsh and Silvestri began to curse and insult each other. The witnesses interviewed made various statements about the contents of Walsh and Silvestri’s argument, however, they were generally consistent in describing the tone and types of things the two men said to each other as going from jocular to more personally biting. Generally, the witnesses said Silvestri and Walsh were arguing about Silvestri’s alleged excessive overtime. Sweeney said at one point in the argument Silvestri called Walsh a “big fag” to which Walsh retorted that Silvestri was “the one who fucked three guys out of overtime.”<sup>14</sup> As the argument got louder and more heated, many of the firefighters present stated that they began to feel uncomfortable and left the kitchen, leaving Walsh, Silvestri, Sweeney, Johnsen, Spitalieri and Velez behind. Silvestri angrily told Walsh he should leave the Firehouse. Walsh then said, in sum, that he was there working overtime until his relief arrived.

The argument continued for a few moments more and culminated with Silvestri threatening to hit Walsh with a chair. Walsh responded by saying that he would “pay” to see him do it, but apparently never expected Silvestri was serious about the threat. As Silvestri began to walk around the table toward Walsh, he picked up a metal chair. According to Sweeney, Walsh did not even turn in Silvestri’s direction. At that point, someone in the kitchen yelled, “Watch out!” Johnsen and Sweeney saw Silvestri strike Walsh in the head with a metal chair, knocking him to the floor. Although Spitalieri asserted that his head was turned away at the moment of impact, he said he heard the sound of the chair striking Walsh. Spitalieri said he turned his head in time to see Walsh fall onto the floor. Silvestri immediately jumped on top of Walsh and struggled with him on the floor. Velez, who was in the apparatus area, heard Sweeney yell, “Get off of him!” Velez ran back into the kitchen and observed Silvestri struggling with Walsh on the floor. At the same time, Sweeney pushed the table out of the way and jumped over it to pull Silvestri off of Walsh. Kane had been walking down the stairs when he heard the commotion in the kitchen. He ran into the kitchen and saw Sweeney pulling Silvestri off of Walsh. Kane then tried to separate the pile of men by pulling Sweeney off Silvestri, who was on top of Walsh. Sweeney told investigators everyone in the Firehouse knew within minutes there had been an altercation in the kitchen.

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<sup>14</sup> Walsh was referring to an incident that had occurred on Thanksgiving of 2003, in which Silvestri had deprived three other firefighters of getting an overtime tour. That incident had become a sore point in the Firehouse.

Walsh had a huge gash on his face and was bleeding profusely. Walsh had no injuries of any kind on his hands, indicating that he likely did not see or attempt to deflect the chair as it came down on him. Silvestri's hands were covered with blood. Sweeney screamed at Silvestri, "Get your locker packed up, you are out of here!" Firefighter Richards, who had been in the apparatus room, also heard the commotion and ran into the kitchen. He grabbed Silvestri and walked him upstairs to the Engine 151 office. Richards said Silvestri was "crying," and asking to see Walsh. By that point, nearly every firefighter in the Firehouse had come to the kitchen, learned Silvestri had struck Walsh with a chair, and saw the state of the kitchen, which had blood and the "plastic cups" everywhere. Shortly thereafter, Velez went to see Silvestri upstairs. Silvestri told Velez that he did not remember hitting Walsh.

It became obvious very quickly that Walsh needed to go to the hospital. Sweeney, Spitalieri and Johnsen told investigators Walsh instructed Sweeney to, "Tell them I fell down the stairs." As Walsh continued to bleed heavily, firefighters looked around the kitchen for absorbent material to stanch the blood flow. Coffee filters from the kitchen were used in a vain attempt to stop the blood pouring from Walsh's face. FF Jeffrey Tkachuk provided Walsh with a pad from his first responder kit. Johnsen went to the second floor to get towels to soak up the blood and informed FF Glen Midbo that Walsh, "got cut." Midbo stated that Kane then ran upstairs and yelled to him, "Grab some towels. Bob is hurt." Midbo then ran downstairs with Kane. When Kane returned to the kitchen, he heard one of the firefighters yell, "Someone call EMS!" However, Sweeney said, "Don't get EMS." Kane believed that Sweeney did not want to call EMS because they had been drinking alcohol and had not yet cleaned up the Firehouse. Sweeney confirmed he did not want anyone to call EMS because he feared the alcohol would be discovered. Investigators determined there was an available EMS vehicle a short distance from the Firehouse at that time and it did not respond to any emergency calls that evening.<sup>15</sup>

At least fifteen firefighters, including three officers (Sweeney, Kane and McFarland), were in the Firehouse when Silvestri assaulted Walsh. A conscious decision was made not to call EMS to assist Walsh. Moreover, no notifications were made to the Fire Department bureaus that could have and should have responded to this matter, such as the Bureau of Health Services, the Safety Battalion, and the Bureau of Investigations and Trials. None of the firefighters called the nearest police precinct. Moreover, eight of the firefighters present when Walsh was assaulted were Certified First Responders (CFRs). CFRs are certified by the state and are required to follow certain protocols for different types of injuries such as external bleeding, shock, head, spine and eye injuries. New York State health officials have indicated they are concerned with the apparent lack of compliance

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<sup>15</sup> The officers on duty should have immediately contacted Battalion Chief Robert Gibson about the assault and the nature of Walsh's injuries. FDNY Reg § 30.1.6 provides, that "[r]eports of special importance or of a nature similar to the following shall be preceded by an immediate telephone conversation to the Deputy and Battalion Chief on duty: (A) An unusual occurrence at a fire or elsewhere; and (B) Loss of life or serious injuries to members or civilians at a fire or elsewhere." Under AUC 268A § 3.1, "[t]he following situation requires immediate notifications to the Bureau of Investigations and Trials: 3.1.2 Physical altercations among members." Additionally, under AUC 268A §2.1.1, all FDNY personnel who had knowledge of Silvestri's assault on Walsh were required to contact the Fire Department Inspector General's Office at DOI.

by the CFRs with respect to performance of those protocols on Walsh. They will be conducting their own review of this matter.

Sweeney ordered Spitalieri to get his (Spitalieri's) car so they could take Walsh to the hospital. Knowing that Sweeney's shift was over and that Sweeney would be leaving the Firehouse to take Walsh to the hospital, Kane said he was panicked by the thought of dealing with FDNY "brass" and reporting Walsh's injury and the alcohol in the Firehouse. He said he asked Sweeney how to handle the situation. Sweeney told Kane he would call him from the car on the way to the hospital and they would figure it out. When he was leaving the Firehouse, Sweeney stated he noticed "empties" strewn around the kitchen, and ordered the remaining firefighters "to clean this fucking mess up." Sweeney told investigators he wanted the firefighters to clean up the blood and alcohol. Sweeney also admitted there was discussion in the kitchen about whether to admit to the presence of alcohol in the Firehouse. The consensus was not to admit to it. (Sweeney also stated that there had been fights in the Firehouse in the past, but, as a matter of course, they were never reported). Walsh, Sweeney and Spitalieri left for the hospital. A great deal of blood was all over the kitchen/dining area. So were plastic cups.

#### **TRAVELING TO STATEN ISLAND UNIVERSITY HOSPITAL (SIUH)**

At about 6:30 pm, Sweeney, Spitalieri, and Walsh drove to Staten Island University Hospital North, which is approximately 11 miles from the Firehouse. Spitalieri drove, Sweeney sat in the front passenger's seat, and Walsh was sprawled out in the back seat. Walsh was dazed and in pain but conscious during the car ride.

While they were en route to the hospital, Sweeney used his cell phone to call Kane twice. All three men – Kane, Sweeney and Spitalieri – recall the conversations similarly. In the first call, Kane and Sweeney discussed what they were going to do. Kane asked Sweeney how he should "write this up." According to Kane, Sweeney then "mentioned the stairs."

During the second phone conversation a few minutes later, Sweeney, Kane and Spitalieri assert Walsh said, "You have to cover me. I fell down the stairs." Spitalieri maintains he overheard Sweeney say, "Bobby said he fell. We are going with that." Kane told investigators "I wanted to make sure Captain Sweeney and I were on the same page. Captain Sweeney suggested we say he fell down the stairs, but that it was my decision." Sweeney also informed investigators he told Kane he had to make the decision and that he had to "live by it." Spitalieri also heard Sweeney say to Kane, "It's your career on the line." According to Sweeney, Kane said they would say Walsh fell down the stairs. Kane informed investigators that "the truth was never an option," and that he made this decision because there had been fighting and alcohol had been consumed in the Firehouse. Kane added that, at one point, he and Sweeney had discussed creating a story that the fight between Walsh and Silvestri had taken place *outside* of the Firehouse to avoid certain reporting requirements. But the alcohol could not be disclosed. After Sweeney concluded his phone conversation with Kane, Spitalieri expressed concern that Silvestri would get away with the assault if they did not tell the truth. At that point, Walsh reportedly complained that his head hurt and told Spitalieri to speed

up.

On the way to the hospital, Walsh did not receive medical treatment. Of the three men in the car, Spitalieri was the only one who was a certified first responder. However, he was the driver of the car. The half-dozen other certified first responders in the Firehouse did not accompany and assist Walsh on the way to the hospital. The decision to transport Walsh in this manner may have delayed unnecessarily his access to medical care and may have caused him to lose additional blood. Walsh could have received treatment at the Firehouse if the firefighters had summoned one of the five ambulances stationed nearby. Neither Sweeney nor Spitalieri called ahead to the hospital to tell them about Walsh's medical condition. Medical personnel from the Trauma Unit reported that a phone call would have helped them prepare for Walsh's arrival and his treatment.

### **COVER-UP AT THE HOSPITAL**

Investigators interviewed numerous physicians, nurses, and other employees of SIUH North who treated Walsh, and had contact with Sweeney and Spitalieri on December 31, 2003. Due to the severity of Walsh's injuries, the hospital staff attended to him immediately. Generally, the various SIUH witnesses consistently described the statements that Sweeney, Spitalieri, and Walsh made during the first fifteen to thirty minutes they were at the hospital about the cause of Walsh's injuries. In short, Sweeney and Spitalieri each lied to at least seven different hospital personnel, which included the doctors, nurses and support staff, when they stated Walsh was injured by a fall down the stairs. This fictitious information was contemporaneously recorded in SIUH's records creating false entries in the business records of the hospital, which is a violation of criminal law.<sup>16</sup> Just before he lost consciousness at the hospital, Walsh also lied about the cause of his injury.

Photographs taken from a video camera at the entrance of the Emergency Room at SIUH North show that Sweeney and Spitalieri were supporting Walsh as he entered the Emergency Room at 6:58 pm.<sup>17</sup> When Walsh arrived at the hospital, he had to be guided because blood was in his eyes. The three firemen walked over to the Registration Desk just inside of the Emergency Room area. There were three Registrars in the Emergency Room at the time that Walsh arrived: Joanne DiSalvo, Lucille Renda and Georgina Guiffre. DiSalvo was the first Registrar with whom Spitalieri and Sweeney spoke that evening. Spitalieri told DiSalvo that Walsh "fell down stairs at the Firehouse." As a result, she indicated that she was going to record his injuries as a "workers compensation case." DiSalvo identified Sweeney and Spitalieri (whom she remembered as "Terry" and "Joe") as having "several conversations" with the three Registrars about Walsh, in which they "repeated how Robert Walsh fell down the stairs at the Firehouse." The two other Registrars, Renda and Guiffre, confirmed DiSalvo's account that the firefighters had maintained that the cause of Walsh's injury was a fall on the stairs.

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<sup>16</sup> See NYS Penal Law Section 175.10, Falsifying Business Records in the First Degree.

<sup>17</sup> See photos taken from SIUH North video camera attached as Attachment B hereto.

Joseph Kelly, the triage nurse summoned to assist Walsh, said Walsh was “alert,” had “facial frontal trauma,” and his “nose was sideways” and “off.” Kelly immediately gave the case to the Trauma Team because Walsh’s injuries were “severe” and possibly life threatening. Kelly said that one of the two individuals who assisted Walsh identified himself as a Fire Department Captain and stated Walsh “fell down a flight of stairs.” (The two men Kelly was referring to were Sweeney and Spitalieri). In order to determine the height of the fall, Kelly asked the two men how many steps Walsh had fallen down. The men said that they did not know. Kelly said, in sum, he needed to know why and how Walsh had fallen down the stairs so the hospital could determine what type of treatment to give him. Nurse Kelly then asked Walsh what had happened but he did not respond. Kelly repeated the question, and Walsh then said that he did not know, and he then said, “I guess I fell down a flight of stairs.” Nurse Kelly again asked Walsh how this had happened so he could assess Walsh’s injuries. Once again, Walsh responded by saying, “I fell down the stairs.” Sweeney and Spitalieri were holding Walsh up while he made those statements.

Kelly said he gave this information to Nurse Yaffa Schweitzer. Another attending nurse, Joseph Ferrara, also told Nurse Schweitzer that Walsh’s injuries were from “a fall” down an unknown number of stairs. Nurse Schweitzer filled out the “Triage Nursing Assessment” portion of the Emergency Department Report, which notes that the “Triage Time” was “1902” hours (7:02 pm), and that “Pt. ambulated to ED s/p fall down? steps.” Nurse Schweitzer subsequently drew blood from Walsh for toxicological reasons. Test results indicated Walsh’s blood alcohol level was .054%.

At least two other SIUH North documents state that Walsh’s injuries were caused by a fall. One document, entitled the “Emergency Department Patient Report,” states that the “Admission Diagnosis” was “trauma s/p fall” (i.e., “trauma after a fall”), and “Pt. fell down stairs, brought to ED by friends.” Another SIUH North record, states, in pertinent part, “Capt. Terry Sweeney – fell down 10 stairs @ fire” and “s/p Fall Trauma I,” and “Pt. is 40 y.o...who had a witnessed fall down several stairs.” This document also states “Colleague from fire department reports pt fell down flight of 10 stairs. After fall, pt. walked toward kitchen colleagues noticed bloody face immediately transferred via car to SIUH-N ED.”

Soon after Walsh arrived at the hospital, Nurse Joanne Olsen, (who was an acquaintance of Sweeney’s), replaced Nurse Ferrara as the Charge Nurse in the Emergency Department, and a series of physicians began to treat Walsh. Dr. Marissa DeFreese, the Resident Surgeon, informed investigators that the hospital was not forewarned that a trauma patient was on the way to the hospital, which is what would have occurred if the patient had been transported by ambulance. She stated that Sweeney and Spitalieri did not alert SIUH North that they were en route with a trauma patient for admission. (However, Sweeney did make two calls to Kane en route to the hospital regarding what the cover-up story should be and what entry to put into the company journal). Dr. DeFreese explained that as a result, SIUH North did not have a trauma team and equipment assembled and ready to treat Walsh immediately. Nor did they have any information about his condition. If transported in an ambulance, Walsh’s blood pressure, other vital signs, and airway would have been constantly monitored by paramedics, who would have relayed that information to

the awaiting hospital. With that information, the hospital would have prepared accordingly for Walsh's arrival. Moreover, in an ambulance, officials stated that steps could have been taken to control the bleeding, immobilize Walsh's head, if necessary, and attend to any sudden difficulty with breathing, etc.

When Walsh first arrived at the hospital, he told Dr. DeFreese that he had fallen down some stairs. Dr. DeFreese stated that she detected an odor of alcohol on Walsh's breath. Walsh and Sweeney repeated that story to another Resident Surgeon at SIUH North, Dr. Shar Hashemi, who had contact with them in the Emergency Room. Dr. Hashemi informed investigators he "detect[ed] a slight smell of alcohol on Walsh's breath," and that he asked Walsh if he had been "drinking" to which his response was "no." Dr. Hashemi then asked Sweeney if Walsh's injuries were the result of "a confrontation." Sweeney responded, "No."

Walsh's condition deteriorated rapidly after he entered the hospital. Among other things, he had lost a massive amount of blood and his blood pressure had elevated to dangerous levels. According to the SIUH Progress Notes, at 7:15 pm Walsh was "bleeding profusely from facial wounds," he was given anesthesia and "[e]lective intubation."<sup>18</sup> Dr. Anthony Kopatsis, the Trauma/General Service Surgical doctor, intubated Walsh in order to protect his airway. He also changed Walsh's status from a Level Two Trauma patient to a Level One Trauma patient, which indicates the patient could die imminently. The hospital reported that, as a result of the severe blows to his face, Walsh suffered a left orbital fracture, bilateral jaw fracture, nose fracture, and a skull fracture.

Sweeney saw Nurse Olsen, his acquaintance, in the Emergency Room, and asked her to look in on Walsh, who was then being treated by the trauma team. Olsen consulted with the staff treating Walsh and came out to tell Sweeney that Walsh's condition was extremely serious, he was being placed on a respirator, and that a coma was to be induced due to the swelling of his brain. She also told Sweeney that the staff treating Walsh was skeptical about whether his injuries were caused by a fall, and that knowing the true cause might be vital to his treatment. And so for the first time, Sweeney admitted Walsh was assaulted "with a steel chair." Spitalieri was present when Sweeney reported the assault with a metal chair. That was at approximately 7:15 pm. Olsen immediately ran to the trauma team to tell them the truth about Walsh's injuries. The hospital staff subsequently recorded in their records that Walsh had been assaulted with a chair. Olsen also instructed Sweeney to notify Walsh's family that Walsh would need a respirator because he would be placed into a medically-induced coma. Sweeney called the Firehouse and told them that he had told a nurse the truth concerning the assault, and that Walsh's condition was very serious and he may die. Sweeney instructed the Firehouse to contact Walsh's family because decisions had to be made. Sweeney learned that Battalion Chief Robert Gibson had already been to the Firehouse and had been given a false story by Kane.

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<sup>18</sup> Intubation is the process by which a tube is inserted down the throat and into the trachea so breathing can be sustained.

The Fire Department's Bureau of Health Services ("BHS") maintains a physician "on-call" on a twenty-four hour basis to attend to medical emergencies that arise among firefighters. Pursuant to Fire Department regulations, BHS doctors who are assigned to emergency duty are required to respond to the scene of an incident when notified of an "acute serious illness or injury to a member on duty," (See Fire Department Regulation § 31.3.21). If an on-duty firefighter is taken to a hospital, the doctor must go to the hospital and examine him to ensure that "proper medical care is given." On New Year's Eve 2003, Dr. Viola Ortiz, a 15-year veteran of the Fire Department, was the BHS physician assigned to attend to these emergencies. At about 8:45 pm, over two hours after Walsh had been assaulted, Dr. Ortiz learned Walsh had been admitted to SIUH North. Based on false information from Kane, Fire Operations Command paged Dr. Ortiz's driver and advised him that a firefighter at a Staten Island firehouse had fallen down some stairs, received a laceration on his face, and had been taken to the hospital – generating an additional FDNY record with the false story. Dr. Ortiz was not informed about the severity of Walsh's injuries or that he had been intubated. As a result, Dr. Ortiz did not immediately attend to Walsh at SIUH North. Rather, she attended to a Bronx firefighter who was complaining of chest pains because she thought that was a more serious emergency.

Dr. Ortiz ultimately arrived at SIUH North at about 10:50 pm, approximately two hours after she had been notified about Walsh's admission to the hospital and approximately four hours after he had been assaulted. When Dr. Ortiz arrived, Walsh was unconscious and had been intubated – a condition far more serious than had been reported to her. She spoke with Spitalieri and asked him how Walsh had been injured. According to Dr. Ortiz, Spitalieri initially stated he did not know how Walsh had been injured. He then told her that he saw Walsh walk into the kitchen bleeding and that Walsh told him he had fallen down. Dr. Ortiz asked a facial surgeon at the hospital the status of Walsh's medical condition. Reportedly, Dr. Ortiz also asked the facial surgeon the cause of the injury and was told he did not know the cause. By that time, Walsh's hospital record indicated he had been hit with a chair. Dr. Ortiz notified Fire Operations Command that she had seen Walsh, and wrote in her report that Walsh was injured while falling down the stairs. Dr. Ortiz left SIUH North at approximately 11:50 pm and went home. Subsequently, Sweeney learned from Spitalieri that he had lied to Dr. Ortiz concerning the assault. However, neither of them contacted Dr. Ortiz to tell her the truth.<sup>19</sup>

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<sup>19</sup> If Dr. Ortiz and other FDNY supervisors had been told the truth about the nature of Walsh's injuries by any of the three officers or firefighters at the Firehouse, she or another FDNY medical official might have responded to Walsh sooner. But because of the lying, Ortiz arrived at SIUH approximately four hours after Walsh had been injured. If Dr. Ortiz had responded to SIUH sooner, it is likely that she too would have detected the smell of alcohol on Walsh (and maybe on Sweeney), and become skeptical about whether a fall down the stairs was the true cause of Walsh's injuries - just like the SIUH officials. Thus, the cover-up caused the FDNY to lose a potential opportunity to learn there had been drinking at the Firehouse. If Dr. Ortiz, as a FDNY medical officer, had obtained a reason to believe that a member had been using alcohol on duty, she would have been obligated to make a series of notifications, including to: the Chief Medical Officer (see Fire Department Regulations § 31.3.11); and one of the supervisory officers from the Division or the Battalion (see AUC 202 §5.6.1). Those supervisors would have been required to commence an investigation including determining whether there was/had been alcohol at the Firehouse. Similarly, had EMS been contacted by anyone at the Firehouse to assist Walsh, the attending EMS officials might have detected the alcohol on Walsh just as the SIUH treating officials did. That, in turn, would have triggered additional reporting requirements such as an Unusual



## **THE COVER-UP CONTINUED AT THE FIREHOUSE**

### **A. The Clean-Up**

Kane admitted to DOI that in the minutes following Sweeney, Spitalieri and Walsh's departure for the hospital shortly before 7:00 pm, he assembled everyone in the kitchen and reiterated Sweeney's directive to clean up the Firehouse and throw away any alcohol. Immediately, members of the two companies feverishly mopped the bloody mess off the floor, tried to wipe down all of the blood throughout the kitchen/dining area,<sup>20</sup> collected and disposed of the left-over beer, plastic cups, empty beer cans, and dumped the sangria that had been in the pot in the kitchen.

Although Kane admitted to DOI that he had told the firefighters to clean up the kitchen/dining area and throw away the alcohol, the firefighters interviewed by DOI denied having heard such an instruction. Further, the firefighters interviewed asserted that they cleaned the kitchen not to prevent the detection of alcohol or a large amount of blood there, which would have been inconsistent with the cover story that Walsh fell down the stairs in the apparatus area of the Firehouse, but because it was dinnertime and the kitchen had to be cleaned.<sup>21</sup>

#### **Johnsen**

Moreover, Johnsen said that he never *saw* any beer that day, and was inconsistent regarding whether he was *told* or *knew* there was beer at the Firehouse that evening. In his first interview with investigators, Johnsen denied hearing Kane give the command to clean up the alcohol. But, in a second interview, Johnsen admitted Kane gave the instruction to clean up, which included a directive to get rid of any "beer." However, in the same interview, Johnsen changed his account yet again and said Kane only gave a general instruction to "clean up" the Firehouse and did not mention beer or alcohol. Johnsen said there was blood all over the kitchen, particularly on the floor and around the sink, which he and others mopped up. Johnsen said he threw away the "red liquid with fruit" in the pot, but would not identify its contents for investigators beyond saying it was a "red liquid with fruit." (Sweeney said this was the pot that contained the sangria Silvestri had made). Johnsen said he could not tell by sight or odor that it was sangria or contained alcohol. Johnsen also said they threw out the bloody mops and rags when they were done cleaning up. None of those items were ever recovered.

Moreover, by Johnsen's own account (and that of Sweeney and Spitalieri) Johnsen was at the table with Sweeney and Walsh up until the time of the assault, which is when Sweeney and Walsh were drinking beer from the plastic cups. Johnsen claimed in his interviews with DOI that he never

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Occurrence Report. Thus, if EMS had been called the circumstances surrounding Walsh's injuries would have become known much sooner.

<sup>20</sup> Some blood splatters were left in various places in the kitchen.

<sup>21</sup> That story continues to be maintained to this date including from supervisory personnel.

saw beer or sangria in the Firehouse the night of the assault, but he did see Sweeney and Walsh sitting at the kitchen table drinking from plastic cups. He claimed he could not tell whether the cups contained beer based on its appearance or odor, or remarks being made in the kitchen. He claimed no one offered a beer to him and he did not hear anyone offer a beer to anyone else in his presence.

Johnsen admitted he discarded “a black plastic garbage bag” from the rear courtyard during the clean-up. (Sweeney stated the beer and empty beer cans were stored in a dark plastic garbage bag in the courtyard). But Johnsen said he heard and saw no indication of beer or empty beer cans. He said the bag was already tied shut and he never looked inside. He further stated that there were no indications the bag contained beer cans from either its smell or the sound that the contents made when he carried it around the side of the Firehouse to place it in the garbage cans. When asked why he cleaned up the rear courtyard, Johnsen said because it was part of the process of cleaning up the Firehouse. Johnsen said this even though later on during the same interview, he stated that when there had been beer at the Firehouse in past years, it was often kept concealed in a garbage bag in the courtyard of the Firehouse. Sweeney also confirmed this practice. At a minimum, he indicated that he understood the purpose of the clean-up was to ensure there was nothing embarrassing around.

### **Kane**

Kane told DOI he did not remember Silvestri drinking or making sangria. However, he said he remembered seeing some kind of “red punch” that had been poured into the sink during the clean-up after the assault. He indicated initially the red liquid in the pot was sangria but flip-flopped in his interview and said it might have been “red punch.”

### **McFarland**

McFarland told DOI that he knew nothing about alcohol at the Firehouse. He saw firefighters empty a pot that might have contained “punch.” But he, too, told investigators he had no knowledge about sangria. McFarland admits that Kane spoke to him about how to deal with the situation in the aftermath of the assault. But McFarland maintains that he did not know anything about alcohol as being part of the problem, the clean-up or the cover-up. This was notwithstanding the fact that the members of his engine company participated in the clean-up.

Despite numerous interviews by investigators, other Fire personnel present at the Firehouse denied knowing anything about alcohol in the Firehouse that day.

## **B. The Cover-up Story**

By his own account, Kane was stunned, confused, shaken and overwhelmed about the situation. He repeatedly asked others, “What am I going to do?” He also retreated upstairs to the

company office to figure out the next course of action and decide what entry to make in the company journal. It was during that time that Kane spoke to Sweeney (who was en route to the hospital) twice by phone about telling everyone that Walsh fell down the stairs.

While upstairs at one point, Kane consulted with McFarland – who was his counterpart and in command of the Engine Company – about what to do. McFarland acknowledged that conversation and asserted that he advised against propagating the fraudulent story, and against making a false entry in the journal. They also discussed the fact that a chief would have to be called about the incident. (McFarland maintains that he had no idea that alcohol or the detection thereof was a concern at that point).<sup>22</sup>

According to Kane, after he concluded two telephone conversations with Sweeney, he again assembled all of the firefighters into the kitchen and said, “Listen, this is what we are going to say. He fell down the stairs, and don’t say anything about the alcohol.” At about 6:55 pm, Kane made a notation in the Firehouse company journal that read, “Lt. Kane records FF B. Walsh receiving injury while descending staircase in Qrts BN 23 Car 33 notified CD 72 to follow.” Kane’s false entry was in violation of Section 15.2.1 of the Fire Department Regulations that requires company journal entries to be accurate and include a record of all injuries.

At about 7:00 pm, Kane called Chief Gibson and informed him, in sum, Walsh had been injured after falling down a flight of stairs and had been taken to the hospital. Gibson told Kane to notify the FDNY Medical Officer and then went to the Firehouse to speak to Kane. Kane apprised McFarland that Gibson was on his way to the Firehouse to speak with Kane about what had happened and that he planned to lie to Chief Gibson about the cause of Walsh’s injuries. McFarland admitted to investigators he then took the Engine Company out for pizza (including Johnsen and Silvestri), so he could avoid seeing Gibson. McFarland said he made sure to be gone long enough (in fact, he was absent for at least an hour) so that Gibson would be gone by the time he and the others returned to the Firehouse. McFarland, who was Silvestri’s first-line or immediate supervisor that night, never made the proper notifications to the FDNY, the NYPD or DOI concerning Silvestri’s assault on another firefighter. He also failed to discipline or remove Silvestri from duty pursuant to FDNY regulations. McFarland had the same reporting requirements as Kane.<sup>23</sup> That is, he was obligated to notify the Battalion Chief pursuant to FDNY Reg. §10.3.3; BITS pursuant to AUC 268A §§ 3.1.1 and 1.2; and the Inspector General pursuant to AUC 268A § 2.1.1.

Moreover, on December 31, 2003, the Housewatch did not make the requisite entry for: a)

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<sup>22</sup> Kane made the call to the Chief because Walsh was a member of the Ladder Company. Silvestri, on the other hand, was a member of the Engine Company – the Engine and its members were McFarland’s responsibility.

<sup>23</sup> Section 10.2.1 of the Regulations state: “Lieutenants are responsible for the supervision and discipline of members and the efficient operation of units under their jurisdiction during their tour of duty.” See also Regulation § 25.1.2 (General Conduct and Behavior).

Walsh's leaving quarters (when he went to purchase the beer); b) Spitalieri's mistakenly reporting for duty; c) Walsh's, Spitalieri's and Sweeney's departing for the hospital; and d) McFarland's taking the Engine Company out for a meal.<sup>24</sup>

Gibson arrived at the Firehouse at about 7:15 pm. According to a memorandum that Gibson subsequently filed with FDNY, Kane informed him when he got to the Firehouse that, "Walsh had been awaiting relief and tripped and fell while descending the stairs to the first floor causing facial injuries and a possible broken nose." Gibson was informed that no one had witnessed this accident. Gibson looked at the staircase where the "accident" was alleged to have taken place. He saw the staircase had no defects or evidence of disrepair. Gibson did not ask Kane whether alcohol had been involved in the incident; did not inspect the kitchen or garbage area; and did not question any other firefighters who were present. He spent approximately 10 minutes with Kane. Kane reported that he was very nervous during Gibson's visit. At 7:30 pm, Gibson made the following entry in the company journal: "BC Gibson entered qtrs for investigation of injury to FF Walsh L 76. Facts found as stated in Lt. Kane entry @ 1855 hours." Gibson then left the Firehouse.

### **C. McFarland Speaks to Chief Gibson**

Gibson called the Firehouse shortly before midnight after receiving a second "ticket" or notification about a firefighter from the Firehouse being seriously injured. McFarland took that call. McFarland explained to Chief Gibson that the notification was a mistake and the only firefighter injured was Walsh – the same injury that had already been reported to Gibson. Thus, by his silence about the truth of the incident, McFarland continued to perpetrate the cover-up of the assault and affirmatively failed to meet his reporting requirements. Hence, the encounter and conversation with Chief Gibson, which McFarland, by going out earlier for pizza had gone to great lengths to avoid, occurred, as a result of Gibson's call.

### **FDNY CHIEFS LEARN ABOUT THE ASSAULT**

At approximately 11:30 pm, nearly four hours after Sweeney first informed hospital personnel about the true nature of Walsh's injuries, Sweeney went back to the Firehouse to inform Kane that he was going to the Battalion 23 office (on Staten Island) to tell Chief Gibson the truth. While Sweeney was at the Firehouse, Silvestri approached him and said he was sorry for what he had done. Sweeney brushed Silvestri off, telling him, among other things, he had better get a lawyer. Sweeney then drove to the Battalion, met Gibson outside, and told him Walsh did not fall down the stairs, but rather, had been struck by Silvestri with a chair. He further informed Gibson that Walsh's condition was very grave and he was in a coma. Sweeney told investigators Gibson said to him, "this is a mess, what are you going to do?" Gibson indicated he was shocked, and immediately called his supervisor, Division 8 Deputy Chief John Bambury, to inform him of what had happened. Bambury, in turn, placed a call to his supervisor, City-Wide Tour Command Chief

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<sup>24</sup> During the excursion for pizza, Johnsen had a discussion with Silvestri in which Johnsen stated, "You may not remember but I remember what happened." Silvestri apologized.

Harold Meyers.

At approximately 12:05 am, according to Firefighter Donald Ruland, the Staten Island Trustee of the Uniformed Firefighters Association (“UFA”), Silvestri called him and said he needed to come to the Firehouse. Ruland asserted that Silvestri gave him “no further information” or explanation of the situation or why Ruland was needed at the Firehouse that New Year’s morning. With that, Ruland went to the Firehouse. Ruland instructed the firefighters not to talk with anyone, including himself, concerning what had happened at the Firehouse until the union attorney arrived.<sup>25</sup> Ruland told investigators that, other than his “overhearing” that “a fight had occurred in the Firehouse,” the firefighters followed his advice and told him nothing. Ruland said he called Ron Kleigerman – the union attorney. As a “courtesy,” he also called Captain John Dunne, a representative of the Uniformed Fire Officers Union (“UFOA”). Ruland stated that he called Dunne to come to the Firehouse and “did not make any statements to Dunne regarding why he was there.” There is no journal entry reflecting Ruland’s arrival at the Firehouse. Dunne’s arrival is likewise not recorded in the journal.

Dunne’s account of the call from Ruland differs from Ruland’s. Dunne stated he received a call at his home from Ruland who told him that a firefighter was severely injured and on life support after being hit with a chair by another firefighter. Moreover, Dunne told investigators he “may have been informed” of drinking at the Firehouse by Ruland during this call. Dunne went to the Firehouse and met with Sweeney, Kane and McFarland. Dunne stated both Sweeney and Kane told him there had been drinking in the Firehouse prior to the assault. According to Dunne, Sweeney told him they were drinking to celebrate New Year’s and for a “job well done at a fire.” Dunne further stated Kane advised him that he (Kane) had made false entries in the company journal and expressed concerns about having done so. Dunne did not report either the drinking at the Firehouse or the false entries to any of the Chiefs who became involved in the inquiry in the early morning hours. Dunne told investigators his only reporting obligations were to the “union attorneys” and Assistant Commissioner James Drury of BITS. Drury told investigators Dunne never made that report to him. Dunne stated he made a report to the UFOA’s Executive Committee the next day.

In the meantime, Sweeney, Gibson and Bambury arrived at the Firehouse in separate cars at approximately midnight. Sweeney stayed at the Firehouse for only a few minutes, and then returned to the hospital to relieve Spitalieri.<sup>26</sup> Bambury assembled a roll call of both companies, which included Silvestri, Johnsen, Kane and McFarland. By that time, Gibson had told Bambury that Sweeney had admitted there had been an altercation in which a firefighter was hit with a chair. Bambury told the roll call that he knew of the assault and stressed its “serious nature.” Kane reported that Bambury also stated to the roll call that a “cover up is more serious than the crime itself.”

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<sup>25</sup> The effect of that instruction would be that Ruland would have no statements of the fire personnel to report to police or other officials investigating the matter.

<sup>26</sup> Soon after Sweeney had returned to the hospital, Safety Chief Daniel Melia arrived, and Sweeney told Melia that Walsh had been struck with a chair.

Division 8 Deputy Chief Bambury then informed the assembled firefighters of their rights “as best as [he] could,” and stated that, “if any of you engaged in wrongdoing you can talk to me or call an attorney.” Bambury then asked the firefighters if anyone was willing to speak to him about what happened. No one came forward to speak to him, (including Kane, McFarland, Johnsen and Silvestri). The roll call ended. Kane was not questioned, confronted or rebuked by either Gibson or Bambury for lying to Chief Gibson earlier in the evening, or for causing Chief Gibson to make a false entry in the company journal, or for his own false entry in the company journal. Firefighters interviewed by investigators said no one reprimanded them for violating their departmental obligation to make proper notifications to supervisors about what happened. In response to a question about why Kane was not questioned, confronted or rebuked, Gibson stated that in addition to being a witness, responsibility for the situation had been passed up the chain of command to Bambury.<sup>27</sup>

Shortly after 12:30 am, Chief Bambury again called Chief Meyers to give him an update. Meyers stated that he then surmised the incident was of a “criminal nature” and should be referred to the Fire Marshal and BITS. Meyers was in Manhattan and began to drive to the Firehouse. While en route to Staten Island, Meyers directed BITS, Dr. Ortiz and Chief Fire Marshal Louis Garcia to report to the Firehouse. Meyers contacted Garcia so notifications could be made to the Police Department. Garcia, in turn, notified Assistant Chief Fire Marshal Richard McCahey and Supervising Fire Marshal Robert Byrnes to report to the Firehouse.

Meyers arrived at the Firehouse at approximately 2:00 am. Ortiz arrived minutes later. Meyers examined each firefighter, individually, to determine if there were any obvious signs of alcohol consumption. With Ortiz and Gibson as witnesses, Meyers asked each firefighter how long he had been on duty that day and if he had consumed alcohol. Charged with observing each firefighter’s appearance and demeanor for signs of alcohol use, Ortiz concluded that none of the firefighters looked or acted as though they had consumed alcohol and did not need to have a blood alcohol test. Shortly after this examination, Byrnes and McCahey arrived and were briefed by Meyers. James Drury of BITS also arrived at the Firehouse.

Garcia arrived at the Firehouse at approximately 2:30 am. He was briefed by both Byrnes and McCahey. At 2:45 am on January 1, 2004, at Garcia’s direction, Fire Marshal Robert Byrnes notified NYPD detectives at the 123rd Precinct about the assault. Detective John Scotto and Sergeant Dominic Manzi of the 123rd Precinct arrived at the Firehouse at 3:15 am. The police noted in their initial report that the crime scene – the Firehouse kitchen – had been cleaned up.

The police began their investigation by speaking with Gibson and checking on the condition of Walsh at SIUH North. At 4:30 am, Detective Scotto attempted to interview McFarland. McFarland told the detective that he was upstairs at the time of the assault and was directed downstairs by another firefighter. McFarland said that when he got downstairs, he observed Walsh

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<sup>27</sup> Chief Bambury told Chief Meyers that he made an “initial determination” that no one at the Firehouse “displayed alcohol use,” and that he conducted a “cursory” search of what was visible in quarters and saw no alcohol. At that point, it had been approximately six hours since the clean-up.

with a bloody towel over his face and an “unidentified firefighter” mopping up blood from the floor. At this time, the interview was terminated when McFarland refused to answer any further questions on the advice of his union representative, Captain Dunne.

At 5:00 am, Detective Scotto attempted to interview Kane. Kane told Scotto that he heard a commotion and was told by an “unidentified” firefighter to go downstairs. Kane stated that when he got downstairs he observed Walsh with a bloody towel on his head, and Sweeney was assisting him. According to Kane, the two then left the Firehouse. At this point, Kane invoked his right to counsel and terminated the interview.

At 5:30 am, Detective Scotto attempted to interview the firefighters in the Firehouse. At that time, union representative Ruland told him that on advice of the union counsel “none of my members will make any statements.”

At 7:00 am, Detective Scotto interviewed Sweeney who told him that Silvestri had assaulted Walsh with a chair in the Firehouse kitchen and that Spitalieri and Johnsen also witnessed the assault.

At 7:30 am, after negotiations between the detectives and Kleigerman and Ruland, the union agreed to allow “only those [firefighters] who witnessed the assault” to speak with Detective Scotto. The union insisted that Detective Scotto interview Spitalieri and Johnsen “narrowly and directly as to what they witnessed in the kitchen of the Firehouse.” Both Spitalieri and Johnsen identified Silvestri as the perpetrator who had assaulted Walsh with a chair in the Firehouse’s kitchen. These interviews ended at approximately 8:20 am.

Silvestri, through his attorney – Kleigerman – declined to speak with Detective Scotto. At 8:25 am, some fourteen hours after the assault and almost six hours after police were first notified, Silvestri was arrested in the Firehouse for the assault on Walsh.

Kane stated to investigators that he was angry with Sweeney because he felt Sweeney created the “mess” and left it with him to deal with. On January 1, 2004, in the morning hours, Kane confronted Sweeney telling him, “. . . you say one thing and you tell the chiefs another . . . you left me out to dry.” Kane indicated that he thought his earlier conversations with Sweeney meant that they would take care of the incident themselves. Kane also expressed resentment because he thought it would have been better to admit there had been a fight, but to say the fight had occurred *outside* the Firehouse. Kane candidly admitted everyone at the Firehouse greatly feared the disclosure about the alcohol.<sup>28</sup>

### **ALCOHOL ON PRIOR OCCASIONS**

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<sup>28</sup> Relatively speaking, Sweeney and Kane provided investigators with the most information about the presence of alcohol on December 31st, their own misconduct, and failure to follow FDNY reporting requirements.

When asking firefighters about previous instances of on-duty drinking in the Firehouse, investigators heard a variety of stories. Sweeney stated variously that firefighters had alcohol from time-to-time, not regularly, but sometimes. He was no more specific, except to indicate that alcohol was in the Firehouse during their Christmas parties and sometimes after responding to a fire. Sweeney admitted he had never disciplined any firefighters for bringing alcohol into the Firehouse.

Spitalieri initially told investigators that in the two years he had been in the Firehouse he was unaware of the presence of any alcohol. He stated he never drank alcohol at the Firehouse. Spitalieri also said he never saw “with my own eyes” anyone drink in the Firehouse. When pressed if there were any indications that firefighters had beer in the Firehouse, Spitalieri acknowledged that approximately four times per month he “heard” firefighters make reference to such things as “12 pack,” “red, white and blues” (an apparent reference to Pabst Blue Ribbon), as well as other references to beer. As the most junior firefighter in the Firehouse, Spitalieri said he was most often given clean-up duty. But he insisted to investigators he never actually saw a can or bottle containing alcohol in the Firehouse at any time, and therefore, could not be certain there had ever been any in the Firehouse when he was there. He did say, however, there were times when he discarded plastic cups that had a residue of a “golden liquid” inside. He would not say, one way or the other, whether the “golden liquid” that he saw was beer. He also said he could not remember names of firefighters who talked about “red, white and blues,” or particular firefighters who were consuming a “golden liquid.” When asked about the scent of the “golden liquid,” Spitalieri said he had no sense of smell.

Johnsen said he had been assigned to the Firehouse for 13 years and remembered there was a lot of drinking “years ago,” and some after funerals relating to September 11, 2001. He asserted that he did not recall seeing any indication of the presence of alcohol in the Firehouse in 2003, including at the 2003 Christmas party, even though Sweeney told investigators there was alcohol at that event.

During his interview with investigators on March 8, 2004, Walsh stated he could remember very little of what happened on December 31, 2003. He stated he was experiencing trouble with his short-term memory.<sup>29</sup> Asked about the prior presence of alcohol in the Firehouse, Walsh stated he remembered an occasion sometime during 2003, when Silvestri made sangria and paella for everyone in the Firehouse.

All of the remaining firefighters interviewed said they never drank at the Firehouse and never saw any indication that anyone else was drinking at the Firehouse.

## CONCLUSION

Based on the testimony of witnesses and documentary evidence gathered during this investigation, it is clear the members of Engine No. 151 and Ladder No. 76 made a concerted effort

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<sup>29</sup> Walsh stated that he was told by one of his doctors that he will never be a firefighter again because his vision and depth perception will likely be permanently damaged, and it is unclear whether he will recover his memory. His motor skills have also been affected and he now walks with a cane. He remains on medication relating to his head injuries.



to conceal the presence of alcohol in the Firehouse and the cause of Walsh's life-threatening injuries. The wrongdoing and lying were both affirmative and by omission. The witnesses stated that the presence and consumption of alcohol in the Firehouse – more so than the brutal assault – became the catalyst for the cover-up that began on December 31, 2003. As one supervisor said, “truth was never an option.” The FDNY personnel involved were determined to handle this incident “in-house” and their way. This cover-up jeopardized Walsh's medical treatment and interfered with the criminal investigation of the attack. The attack by Silvestri, who is now charged with First Degree Assault, was not reported to the police until seven hours after it occurred.

Captain Sweeney candidly told DOI about the presence and open consumption of alcohol in the Firehouse on New Year's Eve. His statements were corroborated by other testimony and by Walsh's blood alcohol content. Despite these facts, other Firehouse personnel have continued to claim ignorance of alcohol in the Firehouse that night. Their ignorance seems implausible based on the evidence and – in the case of some – their own admissions of the indicia of alcohol. The firefighters continued to dissemble after investigators asked them about alcohol use in the days, weeks and months before the assault. At various points, straining credulity to the breaking point, some of the firefighters who were interviewed reduced themselves to describing the presence of a “golden liquid” and “red liquid” at the Firehouse. When asked about the odor of these “liquids,” one firefighter said he had “no sense of smell.” A black plastic garbage bag proven to be filled with beer cans, some empty, made “no sound” when picked up and discarded. And those statements were made by the firefighters who were the most forthcoming about the presence of alcohol.

Equally alarming was the breakdown in supervision at the Firehouse. As the ranking member of the Firehouse, Sweeney was responsible for the presence and open consumption of alcohol. Even if Walsh initiated the concept of covering-up the assault, Sweeney condoned, participated in and advanced it. For his part, Kane lied to FDNY supervisors and generated fictitious official records. McFarland, like Kane, had a duty to report the serious criminal conduct of FF Silvestri, a firefighter in the Engine Company under McFarland's command, but McFarland failed to do so. Instead, McFarland intentionally removed himself from the Firehouse in order to avoid interacting with the FDNY Chief who initially investigated the assault. However, the copious FDNY reporting regulations, heightened in the case of lieutenants, are mandatory and not avoidable by dodging chiefs. Later that night, McFarland was misleading when he spoke to the Chief on the telephone, and then when he saw the Chief at the Firehouse, McFarland failed to tell him the truth. McFarland could have and should have stopped the cover-up in its tracks as early as 7:15 on the evening of December 31, 2003. Sweeney, Kane and McFarland set a permissive tone that led to misconduct in the Firehouse and a subsequent felonious cover-up - all of which was conduct unbecoming to members of the great Department for which they work. Their conduct, as outlined in this Report, also reflects compromises of safety. The example these first-line supervisors set that night for the rest of the Firehouse undermines the level of discipline required for the important and dangerous work they may face any given day.

Lastly, the inquiry conducted during the early morning hours of January 1, 2004, before the police arrived, yielded little to no information about the facts and circumstances. Opportunities to

discover and preserve key facts and evidence were lost.

The members of the Firehouse had no regard for Fire Department regulations throughout this entire event. The regulations were a nullity. Compliance with, and enforcement of, the Department regulations are mandatory and must be re-emphasized as such.

This incident involved three participants who had previous alcohol-related arrests (in the case of Sweeney and McFarland, multiple arrests). The disciplinary officials of the FDNY should closely scrutinize members of the Department when they are arrested, particularly on alcohol-related charges.

So far in 2004, more than 70 newspaper articles have chronicled how firefighters throughout the City have responded to emergencies, engaged in acts of bravery and endured injuries while on the job. Such media coverage appropriately has lauded and depicted courageous, effective members throughout the entire Department. This particular incident should not detract from that reality.<sup>30</sup>

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<sup>30</sup> FDNY members of various ranks have contacted investigators to condemn the behavior of the individuals involved in this incident.

## APPENDIX I

The following table lists the various firefighters and fire officers who were present at the Firehouse on December 31, 2003. This table is based on information obtained from the Firehouse company journals.

### List of Firefighters Present At The Firehouse On 12/31/03

| <u>Name</u>                         | <u>Company</u>        | <u>Scheduled Shift</u> |
|-------------------------------------|-----------------------|------------------------|
| Capt. Terrence M. Sweeney           | Ladder 76             | 0900 – 1800            |
| FF. James M. Toshach, Jr.           | Ladder 76             | 0900 – 1800            |
| FF. Robert E. Walsh                 | Ladder 76             | 0900 – 1800            |
| FF. Charles L. Wahren               | Ladder 76             | 0900 – 1800            |
| Lt. Daniel G. Kenny                 | Engine 151            | 0900 – 1800            |
| FF. Nicholas Mirto                  | Engine 151            | 0900 – 1800            |
| FF. Thomas Ferranti, Jr.            | Engine 151            | 0900 – 1800            |
| FF. Kevin J. Meiners                | Engine 151            | 0900 – 1800            |
| Lt. Raymond G. Kane                 | Ladder 76             | 1800 – 0900            |
| FF. Steven Richards                 | Ladder 76             | 1800 – 0900            |
| FF. Michael W. O'Shea               | Ladder 76             | 1800 – 0900            |
| FF. Joseph Spitalieri <sup>31</sup> | Ladder 76             | N/A                    |
| Lt. Gregory L. McFarland            | Engine 151            | 1800 – 0900            |
| FF. David P. Johnsen                | Engine 151            | 1800 – 0900            |
| FF. Jeffrey L. LaRosa               | Engine 151            | 1800 – 0900            |
| FF. Michael R. Silvestri            | Engine 151            | 1800 – 0900            |
| FF. Salvatore J. Velez              | Engine 151            | 1800 – 0900            |
| FF. Glen A. Midbo                   | Engine 151            | 1800 – 0900            |
| FF. Jeffrey Tkachuk                 | Engine 151 (detailed) | 1800 – 0900            |
| FF. John Treglia                    | Ladder 76 (detailed)  | 1800 – 0900            |

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<sup>31</sup> Spitalieri's s stated he mistakenly arrived at the Firehouse to work and remained.

## APPENDIX II

### Ladder 76 – Status as of Time of Assault

#### Name

|                           |                                    |
|---------------------------|------------------------------------|
| Capt. Terrence M. Sweeney | Off Duty And Present In Firehouse  |
| FF. James M. Toshach, Jr. | On Duty                            |
| Lt. Raymond G. Kane       | On Duty                            |
| FF. Robert E. Walsh       | Continued On Duty, Awaiting Relief |
| FF. Charles L. Wahren     | Continued On Duty, Awaiting Relief |
| FF. Steven J. Richards    | On Duty                            |
| FF. Michael W. O'Shea     | On Duty                            |
| FF. Joseph Spitalieri     | Off Duty And Present In Firehouse  |
| FF. John Treglia          | On Duty But Not Present            |

### Engine 151 – Status as of Time of Assault

#### Name

|                          |                                    |
|--------------------------|------------------------------------|
| Lt. Daniel G. Kenny      | Off Duty And Not Present           |
| Lt. Gregory L. McFarland | On Duty                            |
| FF. Nicholas Mirto       | On Duty But Detailed To Engine 160 |
| FF. Thomas Ferranti, Jr. | Off Duty And Present In Firehouse  |
| FF. Kevin J. Meiners     | Off Duty And Not Present           |
| FF. David P. Johnsen     | On Duty                            |
| FF. Jeffrey L. LaRosa    | On Duty                            |
| FF. Michael R. Silvestri | On Duty                            |
| FF. Salvatore J. Velez   | On Duty                            |
| FF. Glen A. Midbo        | On Duty                            |
| FF. Jeffrey Tkachuk      | On Duty                            |

## APPENDIX III

### List of Interviews Conducted

Fifty-five witnesses were interviewed, some of them more than once, and a total of seventy-five interviews conducted during the course of this investigation. The 123<sup>rd</sup> Precinct conducted ten interviews on the morning of January 1, 2004. DOI then opened its investigation, and, subsequently, all of the interviews were conducted by representatives of the various agencies involved in this investigation. The list of individuals interviewed appears below.

| <u>Name &amp; Title</u>                                | <u>Dates Interviewed</u>     |
|--|------------------------------|
| 1. Division 8 Deputy Chief John Bambury, FDNY          | 01/09/04                     |
| 2. Supervising Fire Marshal Robert Byrnes, FDNY        | 01/01/04, 01/16/04           |
| 3. Dr. Chow, SIUH North                                | 01/01/04                     |
| 4. Firefighter Nicholas Cicero, FDNY                   | 02/24/04                     |
| 5. Dr. Marissa DeFreese, SIUH North                    | 01/14/04                     |
| 6. Registrar Joanne DiSalvo, SIUH North                | 01/08/04                     |
| 7. Captain John Dunne, FDNY/UFOA                       | 01/28/04, 02/04/04           |
| 8. Security Officer Charles Fear, SIUH North           | 01/07/04                     |
| 9. Firefighter Thomas Ferranti, FDNY                   | 01/23/04                     |
| 10. Charge Nurse Joseph Ferrera, SIUH North            | 01/07/04                     |
| 11. Firefighter Edward Fitzpatrick, FDNY               | 02/05/04                     |
| 12. Chief Fire Marshal Louis Garcia, FDNY              | 01/06/04                     |
| 13. Battalion Chief Robert Gibson, FDNY                | 01/01/04, 01/28/04, 03/05/04 |
| 14. Registrar Georgianna Guiffre, SIUH North           | 01/07/04                     |
| 15. Housekeeper Edna Gomez, SIUH North                 | 01/13/04                     |
| 16. Assistant Commissioner Steven Gregory, FDNY        | 01/06/04                     |
| 17. Security Officer Jorge Guzman, SIUH North          | 01/12/04                     |
| 18. Dr. Shar Hashemi, SIUH North                       | 01/14/04                     |
| 19. Firefighter David Johnsen, FDNY                    | 01/01/04, 01/20/04, 03/04/04 |
| 20. Lieutenant Raymond Kane, FDNY                      | 01/01/04, 02/20/04, 02/24/04 |
| 21. Firefighter John Kelly, FDNY                       | 02/05/04                     |
| 22. Triage Nurse Joseph Kelly, SIUH North              | 01/07/04, 03/04/04           |
| 23. Dr. Anthony Kopatsis, SIUH North                   | 01/13/04, 03/10/04           |
| 24. Firefighter Jeffrey LaRosa, FDNY                   | 01/23/04                     |
| 25. Firefighter Harold Malloy, FDNY                    | 02/10/04                     |
| 26. Assistant Chief Fire Marshal Richard McCahey, FDNY | 01/06/04                     |
| 27. Lieutenant Gregory McFarland                       | 01/01/04, 01/30/04, 03/05/04 |

|   |   |
|---|---|
| 28. Safety Battalion Chief Daniel Melia, FDNY           | 01/28/04                                |
| 29. Firefighter Albert Merk, FDNY                       | 02/10/04                                |
| 30. City-Wide Tour Command Chief Harold Meyers, FDNY    | 01/28/04                                |
| 31. Dr. Shawn McClure, SUIH North                       | 01/14/04                                |
| 32. Housekeeper Christine Minafo, SIUH North            | 01/14/04                                |
| 33. Firefighter Glen Midbo, FDNY                        | 01/29/04                                |
| 34. Firefighter Nicholas Mitro, FDNY                    | 01/29/04                                |
| 35. Dr. Samuel Ogle, SIUH North                         | 01/12/04                                |
| 36. Charge Nurse Joanne Olsen, SIUH North               | 01/01/04, 01/07/04                      |
| 37. Firefighter Michael O'Shea, FDNY                    | 01/23/04                                |
| 38. Dr. Viola Ortiz, FDNY                               | 01/30/04                                |
| 39. Security Officer Steven Pica, SIUH North            | 01/05/04                                |
| 40. Firefighter Steven Richards, FDNY                   | 01/23/04                                |
| 41. Registrar Lucille Renda, SIUH North                 | 01/07/04                                |
| 42. Firefighter Donald Ruland, FDNY/UFA                 | 01/01/04, 02/11/04                      |
| 43. E.R.Nurse Yaffa Schweitzer, SIUH North              | 01/07/04                                |
| 44. Firefighter Joseph Spitalieri                       | 01/01/04, 01/20/04, 02/03/04,<br>3/4/04 |
| 45. Captain Terrence Sweeney, FDNY                      | 01/01/04, 01/27/04, 01/29/04            |
| 46. Security Sgt. Rita Tattos, SIUH North               | 01/12/04                                |
| 47. Firefighter Jeffrey Tkachuk, FDNY                   | 01/23/04                                |
| 48. Firefighter James Tosach, FDNY                      | 01/23/04                                |
| 49. Firefighter John Treglia, FDNY                      | 01/29/04                                |
| 50. Supervising Fire Marshal Mario Vasconi, FDNY        | 01/16/04                                |
| 51. Firefighter Salvatore Velez, FDNY                   | 01/23/04                                |
| 52. Firefighter Charles Wahren, FDNY                    | 01/29/04                                |
| 53. Firefighter Robert Walsh, FDNY                      | 03/08/04                                |
| 54. Dr. Marina Stajic, Office of Chief Medical Examiner | 01/15/04                                |
| 55. BITS Assistant Commissioner James Drury             | various from 01/02/04 to 03/17/04       |

# **Attachment A**

# ENGINE 151 / LADDER COMPANY 76





**DINING AREA OF KITCHEN  
TABLE WHERE WALSH WAS SITTING**



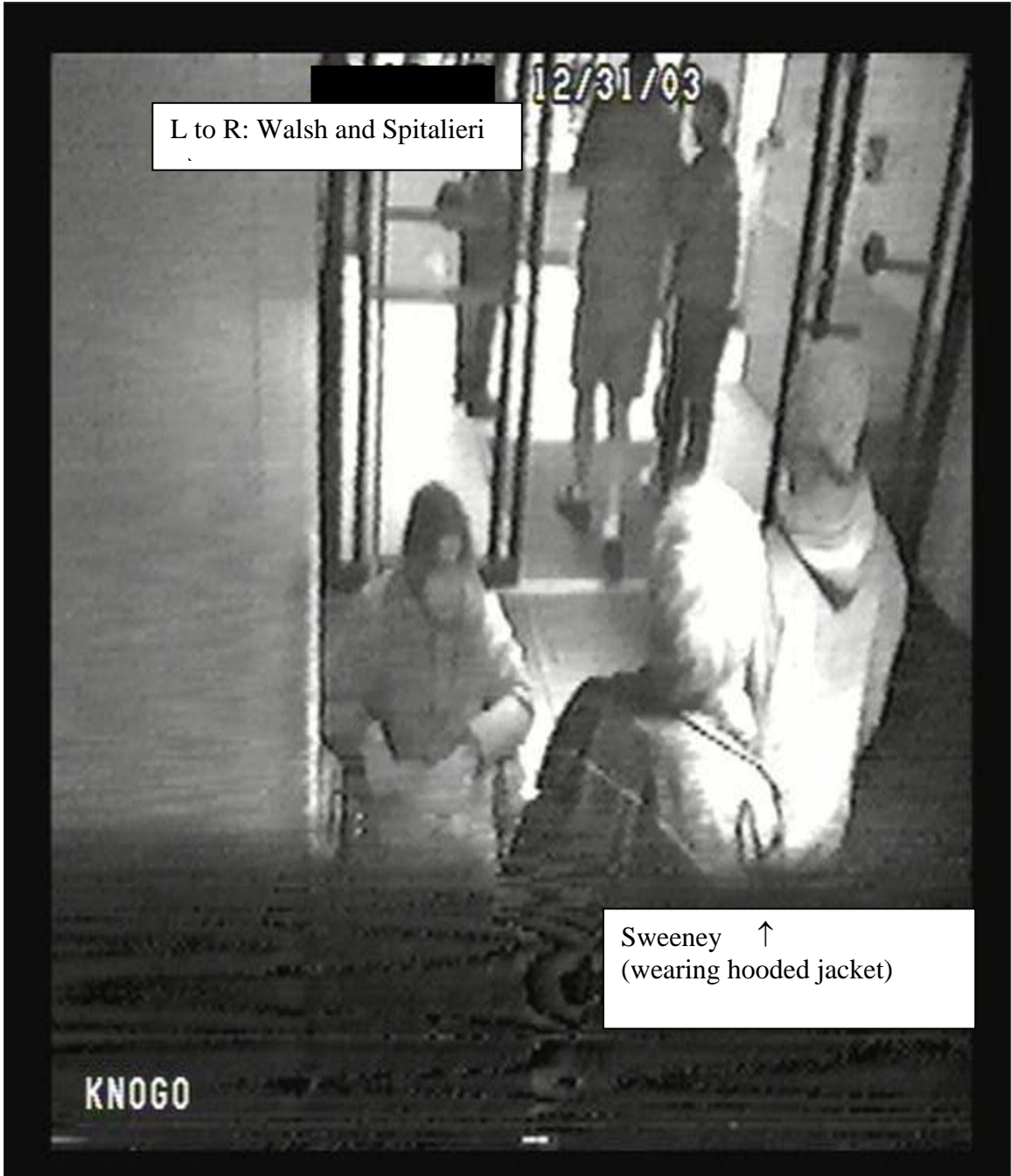
**KITCHEN/DINING AREA:  
OPPOSITE VIEW OF TABLE AND VIEW INTO  
KITCHEN AREA**



## CLOSE-UP OF KITCHEN AREA

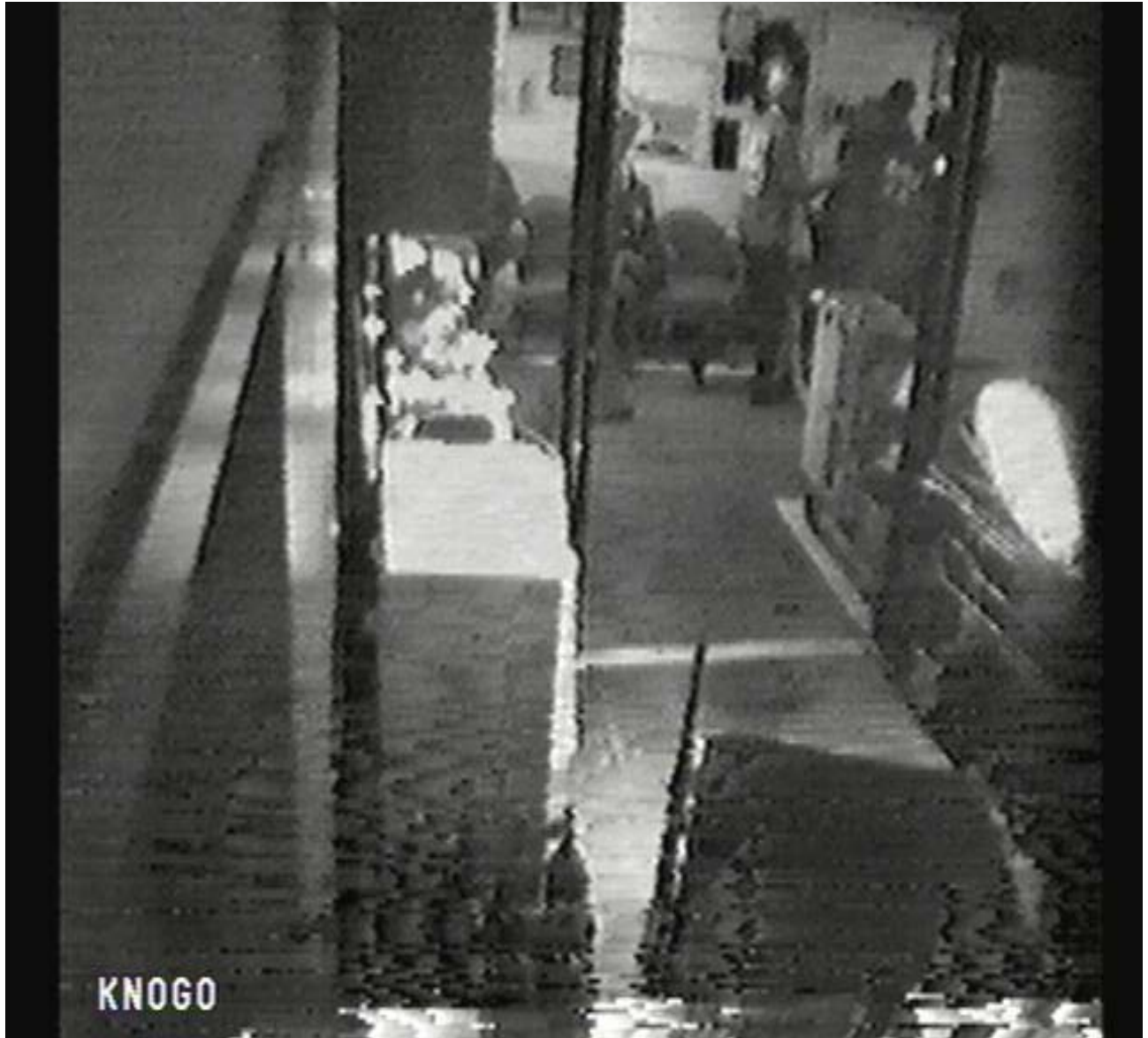


# **Attachment B**





Walsh assisted by Sweeney and Spitalieri (on either side); nurse on far right



Left to right: Sweeney, Walsh and Spitalieri