

CHAPTER FOURTEEN: WHITE-COLLAR CRIME

INTRODUCTION

As the textbook indicates, white collar crime can include many offenses, and Chapter Fourteen provides a broad scope of white collar offenses as well as the laws that regulate these crimes. This supplemental chapter will be much more narrowly focused. For this chapter, there will be a brief discussion on environmental crime (found in the Consolidated Laws of New York), but the majority of the chapter will focus on public corruption. Public corruption is salient for this discussion since, as the textbook states, New York is described as one of the most corrupt states. As this chapter will show, there is no shortage of examples of public corruption. The offenses comprising public corruption that will be discussed are bribery, giving and receiving unlawful gratuities, receiving reward for official misconduct, and official misconduct.

The articles of the Penal Law that proscribe public corruption are found in 195 (Official misconduct and obstruction of public servants generally) and 200 (Bribery involving public servants and related offenses). Additionally, Article 180 concerns bribery not involving public servants. This article will be merely introduced in this chapter. Articles 195 and 200 will be discussed with more detail.

RESOURCES

The articles discussed in this chapter, Articles 180, 195, and 200 are presented respectively, through the following links: <http://ypdcrime.com/penal.law/article180.htm>, <http://ypdcrime.com/penal.law/article195.htm> and <http://ypdcrime.com/penal.law/article200.htm>

The reader can also find the Environmental Conservation Law at: <http://www.dec.state.ny.us/website/regs/>

ENVIRONMENTAL CRIME

Environmental Conservation Law is defined in Chapter 43-B of the Consolidated Laws of New York. This chapter contains articles, among others, related to:

- Lands and forests (Sections 9-0101 to 9-1503);
- Fish and wildlife (Sections 11-0101 to 11-2305);
- Marine and coastal resources (Sections 13-0101 to 15-13-0371);
- Flood control (Sections 16-0101 to 16-0119);
- Air pollution control (Sections 19-0101 to 19-0923);
- Collection, treatment and disposal of refuse and other solid waste (Sections 27-0101-27-1701);
- Detergents and other household cleansing products (Sections 35-0101 to 35-0109);
- Lake George park commission (Sections 43-0101 to 43-0125);
- Hudson River Valley Greenway (Sections 44-0101 to 44-0121);

- Implementation of the Clean Water/Clean Air Bond Act of 1996 (Sections 56-0101 to 56-0611); and
- Long Island Pine Barrens Maritime Reserve Act (Sections 57-0101 to 57-0137).

The Environmental Conservation Law provides New York with the ability to seek civil and criminal remedies for violation of the laws defined by Chapter 43-B. Some of the criminal charges levied are those involved with improper removal of hazardous waste. In 1989, for example, Paul Gervasi, who owned three electro-plating companies, was charged with five felony counts of endangering the public safety. He was accused of dumping 16 drums containing 2,000 pounds of cyanide and arsenic onto two vacant lots in East New York, Brooklyn.¹ In another case, Edmund Barbera, was charged with operating a mercury repackaging business that caused soil contamination in his neighborhood and cost the federal Environmental Protection Agency \$2.2 million to clean up. The defendant, who ran his business in a workshop behind his home, contaminated the soil at his home and on neighboring properties, and the police seized more than 200 pounds of mercury from his property.² In yet another case, Gustave Rosenberg, who was president of a business that recycled used steel drums for resale was convicted of disposing waste material through a commercial refuse remover that was not licensed to remove hazardous waste. Defendant was convicted of unlawful dealing in hazardous wastes in the second degree.³

In 1991, the Hudson River Valley Greenway project was implemented to establish an open-space corridor along both sides of the Hudson River from Albany to Westchester Counties. The measure established the Greenway Conservancy for the Hudson River Valley and asked participation from the affected counties to plan open-space and economic development goals to preserve existing settlement patterns and prevent human sprawl. Also, when greenway rights are threatened, the Conservancy, through the Environmental Conservation Law, has the right to file lawsuits against potential intruders to the plan.⁴

The Environmental Conservation Law also regulates hunting and fishing in New York State. One problem conservation law enforcement officers must confront is animal poaching. As one clever response to curb “road hunters,” those who shoot deer from inside their vehicles, the Department of Environmental Conservation uses a life-like deer decoy at the edge of wooded areas. The deer’s tail moves by radio control and often fools hunters. Those arrested for shooting or otherwise attacking the animal often have no hunting license or are trying to kill more deer than the legal limit. In one case, a hunter kept shooting the deer, and when it would not go down, attacked it with a knife. Other hunters using a bow and arrow would stalk the decoy. State conservation officers have attributed hunters’ behavior to frustration, haste, or blood lust.⁵

BRIBERY

Bribery Not Involving Public Servants, and Related Offenses

New York criminalizes bribery of both private employees (commercial bribery) and public officials. Article 180 pertains to bribery not involving public servants and related offenses. Sections 180.00 and 180.03 proscribe bribing any employee with an intent that it will influence the employee’s conduct in relation to his employer’s affairs. Sections 180.05 and 180.08 criminalize the acts of an employee who solicits or agrees to a bribe that he understands will influence his conduct in relation to his employer’s affairs. Sections 180.10 and 180.15 criminalize bribery of, and bribe receiving by, a labor official. Sections 180.40, 180.45, 180.50, 180.51, 180.52, and 180.53 concern sports bribing, tampering

with a sports contest, and interference, including unlawfully administering stimulants to a race horse or a human athlete. The rest of the article criminalizes rent gouging of real property (i.e., charging excessive rates).

Bribery Involving Public Servants, and Related Offenses

Article 200, on the other hand, involves public servants either receiving or soliciting money from a private citizen for performing or omitting to perform some official act or for a promise to perform or to omit to perform some act. This article includes the rewarding of official misconduct, and giving and receiving unlawful gratuities, in addition to bribery which requires “that...a person gives or offers money or other thing of value to a public officer with intent to influence him in respect to any act involving his official powers.”⁶

Section 10.00(15) of the general definitions of the Penal Law defines a “public servant” as “(a) any public officer or employee of the state or of any political subdivision thereof or of any governmental instrumentality within the state, or (b) any person exercising the functions of any such public officer or employee. The term public servant includes a person who has been elected or designated to become a public servant.” Under this definition, a security officer of a state university is also a public servant.⁷

The following sections relate to the bribery offenses in Article 200. Bribery in the third degree includes the basic act of bribery up to \$10,000, whereas bribery in the second degree adds the aggravating factor of an offer in excess of \$10,000 to a public servant. Importantly, the public servant’s failure to accept the bribe does not relieve the briber of criminal liability. Both bribery in the second and third degrees were enacted in 1986, and bribery in the first degree was enacted in 1973.

Section 200.00, Bribery in the third degree

A person is guilty of bribery in the third degree when he confers, or offers or agrees to confer, any benefit upon a public servant upon an agreement or understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribery in the third degree is a class D felony and is punishable by up to seven years of imprisonment.

An example where a person was convicted of bribery occurred in *People v. Herrera*. In this case, defendant owned an illegal after-hours social club which the police were ticketing. At one point, defendant’s wife approached detectives who were in the area investigating a homicide, and both she and defendant negotiated protection money payoffs where police would stop ticketing the club and its patrons. Defendant had made payments to one of the detectives for \$150 on two separate occasions before he was arrested.⁸

Section 200.03, Bribery in the second degree

A person is guilty of bribery in the second degree when he confers, or offers or agrees to confer, any benefit valued in excess of ten thousand dollars upon a public servant upon an agreement or

understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribery in the second degree is a class C felony and is punishable by up to 15 years of imprisonment.

Section 200.04, Bribery in the first degree, states:

A person is guilty of bribery in the first degree when he confers, or offers or agrees to confer, any benefit upon a public servant upon an agreement or understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced in the investigation, arrest, detention, prosecution, or incarceration of any person for the commission or alleged commission of a class A felony defined in [Article 220, Controlled Substances Offenses] of the Penal Law or an attempt to commit any such class A felony.

Bribery in the first degree is a class B felony and is punishable by up to 25 years of imprisonment.

Bribe Receiving

Bribe receiving is intended to punish the bribe taker as severely as the bribe giver. As with bribery, bribe receiving contains three degrees, and the language of the bribe receiving statutes is substantially the same as bribery. Each degree of bribe receiving makes the actor liable to the same degree of punishment as bribery.

Section 200.10, Bribe receiving in the third degree

A public servant is guilty of bribe receiving in the third degree when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribe receiving in the third degree is a class D felony.

An example of bribe receiving that meets these basic elements occurred in *People v. Teitelbaum and Starroff*. In this case, the driver of a car, Wiggins, was stopped by defendants, who were police officers, for running through a stop sign. Wiggins was not licensed to drive and cocaine was found on her person during a search in which she was fondled by defendant Teitelbaum. Rather than making an arrest, defendants told Wiggins that everything would be alright if she went with them. They then directed her to drop off her male passenger and drive her female passenger with her to defendant Starroff's apartment. At the apartment, defendants asked her for sex and Wiggins claimed that she orally sodomized both defendants. Defendants' convictions for bribe receiving in the second degree were upheld by the evidence that defendants solicited sex in exchange for their failure to arrest Wiggins. The court concluded, "In order to support a verdict of guilty of bribe receiving in the second degree, the People must prove that the public official solicited or accepted or agreed to accept a benefit upon the

understanding or agreement that his actions would thereby be influenced. In determining whether there was such an agreement...it is the defendant's state of mind which is controlling."⁹

The next case distinguishes between bribe receiving and receiving unlawful gratuities. According to §200.35, a public servant is guilty of receiving unlawful gratuities when he solicits, accepts or agrees to accept any benefit for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation. This offense is a class A misdemeanor. In *People v. Hendy*, the Supreme Court of New York determined that the acts associated with each offense are different. Defendant, a construction plans examiner for the department of buildings, was charged with receiving sums of money from a construction company over a period of time. The receiving unlawful gratuities charge was included as a lesser included offense of the bribe receiving charges.

According to the court, "The essential difference between the two charges is that in bribe receiving a benefit must be conferred or offered or agreed to be conferred upon a public servant for the purpose of influencing his decision, whereas in receiving unlawful gratuities the benefit is conferred upon the public servant for having already engaged in official conduct which he was required or authorized to do for which he was not entitled to additional compensation." In other words, "one is payment for doing something and the other is payment for having done something which is for the benefit of someone other than the public servant." On March 1, 1974, defendant met with a construction company employee who asked that certain plans be approved. The court concluded that defendant could not be convicted of receiving unlawful gratuities because he had not already approved the plans. The conviction for receiving unlawful gratuities was reversed, and the bribery conviction upheld.¹⁰

Section 200.11, Bribe receiving in the second degree

A public servant is guilty of bribe receiving in the second degree when he solicits, accepts or agrees to accept any benefit valued in excess of ten thousand dollars from another person upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribe receiving in the second degree is a class C felony.

Section 200.12, Bribe receiving in the first degree

A public servant is guilty of bribe receiving in the first degree when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced in the investigation, arrest, detention, prosecution or incarceration of any person for the commission or alleged commission of a class A felony defined in [Article 220, Controlled Substances Offenses] of the Penal Law or an attempt to commit any such class A felony.

Bribe receiving in the first degree is a class B felony.

Other Instances of Bribery

The Supreme Court of New York long ago stated, “Recognizing a ‘bribe’ is something more than a mere personal satisfaction arising from the gratification of a wish. There must be some thing of value received, not necessarily of pecuniary or intrinsic value, but value in the sense of a personal advantage of some sort.”¹¹ Examples include police officers who receive sex instead of money in lieu of police protection.

The police are often the public officials most directly in touch with communities. As such, they may find themselves confronted with temptations that elude other public officials. And in a city of over 37,000 police officers (the largest complement in the United States), police in New York City may elude accountability to their superiors and even the community. When vice (i.e., drugs, gambling, prostitution) is pervasive, the temptations may be greater when oversight is lax.

In New York, the temptations occasionally erupt into scandals that reach beyond the precinct and into the city and sometimes the national conscience. In the 1970’s, prostitution and gambling payoffs to beat cops resulted in a special board, the Knapp Commission, to study and prosecute police corruption. In the 1990’s, police corruption again resulted in the Mollen Commission. Also, the shakedown of drug dealers by police in the 30th Precinct, the “Dirty 30,” resulted in the arrests of police officers on the midnight shift, and two officers entering the federal witness protection program.

In the late 1990’s, officers from Manhattan’s Midtown South precinct, which covers Times Square and the theater district, were involved in a scandal involving prostitution. For 15 years, officers were soliciting prostitutes for free sex from a brothel located four blocks from the precinct. The officers also received jewelry, cash, and airline tickets. In addition, after the madam became concerned about having uniformed officers in her brothel, she made her own apartment available to them. Officers used the apartment to relax or have sex. The brothel became known as “the Coop.” Coop is police slang for a hiding place, especially one to sleep.¹²

Eventually, the department’s internal affairs began an investigation after the brothel was raided by vice squad officers. The investigation essentially ended, however, after the police commissioner, Howard Safir, and the mayor, Rudolph Guiliani, gave a press conference. It was suggested that the press conference precluded investigators from determining who in the upper echelons of the police department either participated in or knew about the activities.¹³ In the end, 21 officers were implicated. Four of them pleaded guilty to receiving bribes for allowing the brothel to operate unimpeded, and the rest were subject to departmental administrative discipline.¹⁴

In another example of bribery, in July 2006, Bernard Kerik, the former New York City corrections commissioner (between 1998-2000) and police commissioner (between 2000-2001) and nominee for Secretary of Homeland Security, pleaded guilty for failing to report a loan and accepting a gift, worth \$165,000, for renovation of his Bronx apartment in late 1999 and early 2000, two misdemeanors in violation of the city’s conflict of interest law. The contractor had suspected ties to organized crime, which, astonishingly, was known by lawyers in the New York City Department of Investigation since this agency was investigating the company’s ties, under the regime of former Commissioner Edward Kuriansky. It was also suggested that Mayor Giuliani may have known about the ties and Kerik’s relationship with the principal of the company since Kuriansky met with the mayor and his senior staff every day. This information, however, did not affect Kerik’s candidacy for police commissioner in 2000.

The investigation into Kerik’s misconduct came to light as a result of an investigation by the New Jersey Division of Gaming Enforcement into the activities of Interstate Industrial Corporation, the

company that agreed to renovate Kerik's Bronx apartment. As part of his plea agreement, Kerik was required to pay \$221,000 in fines and penalties for the renovations and failure to report the loan (\$28,000 from a friend) to the Conflict of Interest Board. The agreement allowed Kerik to avoid jail time, more serious bribery charges, and a felony conviction.¹⁵ Additionally, after Kerik pleaded guilty, Mayor Michael Bloomberg had Kerik's name removed from the Bernard B. Kerik Complex (a downtown jail nicknamed "the Tombs") and returned the name to the "Manhattan Detention Complex."¹⁶

New York legislators too are not immune from official misconduct. Since 2003, seven lawmakers from New York City alone have been accused of crimes ranging from throwing a cup of hot coffee at an employee to felonies like bribe-taking. That makes about one in 10 members of the Legislature, or 10%, of the city's delegation to the Legislature in Albany. One New York City delegate remarked that the rate of allegations against public servants is higher than against the public itself. Most recently, Diane Gordon from Brooklyn was arrested for helping a real estate developer secure a vacant piece of land in exchange for his building her a \$500,000 house in Queens, outside of her district. Legislators who have recently pleaded guilty were Gloria Davis of the Bronx in 2003 for bribery and Guy Velella, also of the Bronx, in 2004 for bribe-taking. One candidate, who is currently running for lieutenant governor recently acknowledged that in Albany, in "the overall dysfunction of the...culture, trust is derived out of deal-making and patronage rather than by trying to establish good government."¹⁷

Giving and Receiving Unlawful Gratuities

These offenses are penalized as misdemeanor conduct where the benefit given to or received from the public servant is for performing or having performed an official service that he was already "required" or "authorized" to perform without added compensation.

Section 200.30, Giving unlawful gratuities, states:

A person is guilty of giving unlawful gratuities when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation.

Giving unlawful gratuities is a class A misdemeanor punishable by up to one year imprisonment.

In *People v. LaPietra*, defendant, the president of a trucking company, in the presence of two patrolmen, gave \$10 to one of the officers and stated, "Here, you fellows, buy some coffee for all the homework you have done." The officers had just finished investigating a motor vehicle accident involving a truck owned by defendant. Defendant was convicted of giving unlawful gratuity.¹⁸

Section 200.35, Receiving unlawful gratuities, states:

A public servant is guilty of receiving unlawful gratuities when he solicits, accepts or agrees to accept any benefit for having engaged in official conduct which he was required or authorized to perform, and for which he was not entitled to any special or additional compensation.

Receiving unlawful gratuities is a class A misdemeanor.

Receiving Reward for Official Misconduct

According to **Section 200.25**, Receiving reward for official misconduct in the second degree: A public servant is guilty of receiving reward for official misconduct in the second degree when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant.

Receiving reward for official misconduct in the second degree is a class E felony.

An example of receiving reward for official misconduct occurred in *People v. Logan* whereby defendant was a New York City Police Department detective assigned to the Robbery Identification Program in the 77th Precinct in Brooklyn in which a local drug dealer, Gibson, complained to defendant that he was being “ripped off” by police officers from the 79th Precinct, also in Brooklyn. In return, defendant introduced Gibson to Police Officer Lewis in the 79th Precinct. Lewis reported Gibson’s conversation to his superiors and recorded subsequent conversations. In one conversation, Gibson offered to pay Lewis protection for his drug enterprise in return for \$1,000 a week. Defendant also told Lewis that “he had his own agreement with Gibson.” Furthermore, Gibson paid Lewis \$400 on one occasion and \$500 afterward for protecting his operation. In the view of the Supreme Court of New York, defendant “acted with the mental culpability required to commit the crimes of bribe receiving in the second degree and official misconduct and that in furtherance thereof, he solicited, requested, commanded, importuned or intentionally aided Lewis to commit such crimes.” The conviction was upheld.¹⁹

The following case establishes the bridge between bribery and receiving reward for official misconduct in the second degree by a New York City judge.

PEOPLE V. GARSON
Court of Appeals of New York
6 N.Y. 3d 604 (2006)

Opinion By: Ciparick, J.

The issue in this case concerns whether a judge’s behavior, in violation of the Rules Governing Judicial Conduct, is legally sufficient to support six counts of receiving reward for official misconduct in the second degree.

Defendant was a Justice of the Supreme Court of the State of New York who at the time of these events was assigned to a matrimonial court in Kings County. He is alleged, from October 2001 through March 2003, to have engaged in a course of conduct where on numerous occasions, he violated his duty as a public servant for which he received benefits of cash and other gratuities. Defendant and Paul Siminovsky, an attorney who regularly appeared before him, developed a relationship in 2000 in which Siminovsky would buy defendant meals and give him gifts in exchange for receiving preferential treatment for Siminovsky’s clients.

White-Collar Crime

Garson was indicted for six counts of receiving reward for official misconduct in the second degree. The facts of each count follow. Siminovsky represented an Avraham Levi in a divorce proceeding which was pending before defendant. Defendant told Siminovsky that he “would prevail in the Levi case even though he did not deserve it.” Defendant told Siminovsky that “he would not order the sale of the marital residence and that Mr. Levi would be entitled to its exclusive use.” In return, Siminovsky gave defendant a box of cigars, priced at \$272.28, as a reward. Shortly after this exchange, Siminovsky was arrested and began cooperating with the district attorney’s office.

The other five counts all show that defendant would refer either attorneys or clients to Siminovsky who would then represent them in divorce proceedings in front of defendant. Siminovsky would then compensate defendant with monetary rewards, ranging from \$500 to about \$1,500. Defendant was arrested on March 12, 2003 after meeting with Siminovsky and suggesting that he make a campaign contribution to defendant’s wife.

Defendant was ultimately charged with bribe receiving in the third degree (§200.10), official misconduct (§195.00(1)), and receiving unlawful gratuities (§200.35). Section 200.35 was demonstrated by defendant’s advising Siminovsky what witnesses to call for a case, what arguments to make, and how defendant intended to rule on key issues in the case. Defendant also made referrals to help Siminovsky’s practice and, in turn, to gain monetary benefits in the form of “referral fees.”

Defendant moved to dismiss the indictment of the six counts of receiving reward for official misconduct (§200.25) on the ground that the “evidence presented to the grand jury that the defendant violated the Rules Governing Judicial Conduct is legally insufficient to establish that he violated a duty he had as a public servant with the meaning of the Penal Law.” The argument relied on the contention that “the People could not rely on the Rules to establish that defendant’s conduct was in dereliction of his duties as a judge.” Further, the defendant claims that “violated his duty” as it is defined in §200.25 lacks express legislative definition and cannot be proved by evidence that defendant violated his duty under the Rules. The court disagreed. “The failure to define each term in a criminal statute does not render the statute void for vagueness. The statute at issue, as applied to these facts, is “sufficiently definite to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute.” Further, to hold that judges ought to be exempt from the Penal Law, “would lead to the incongruous result of insulating judges from criminal liability under Penal Law §200.25 because they have a formal body of rules governing their conduct while subjecting other public servants—whose duties are not defined in either Penal Law §200.25 or any...code of conduct comparable to the Rules—to criminal liability for similar conduct. Such a result not only effectively immunizes judges but also runs counter to the legislative objective of deterring public servants from, and prosecuting them for, abusing their positions.”

Receiving reward for official misconduct in the first degree, **Section 200.27**, states:

A public servant is guilty of receiving reward for official misconduct in the first degree when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant in the investigation, arrest, detention, prosecution, or incarceration of any person for the commission or alleged commission of a class A felony defined in [Article 220, Controlled Substances Offenses] of the Penal Law or the attempt to commit any such class A felony.

Receiving reward for official misconduct in the first degree is a class C felony.

OFFICIAL MISCONDUCT AND OBSTRUCTION OF PUBLIC SERVANTS GENERALLY

Section 195.00, Official misconduct, replaces about 30 former Penal Law provisions defining various misdemeanor offenses of commission or omission involving specific duties by specific public officers. This section condenses this general area of official misconduct into one offense. Subsection (1) covers conduct of commission, while subsection (2) covers omissions. The specific *mens rea* required for official misconduct is intention to “obtain a benefit or deprive another person of a benefit.” This excludes unauthorized conduct or neglect of duty, which, though possibly rising to the level of removal from a position or subjection to disciplinary action, does not seem egregious enough for criminal charges.

Section 195.00 of Article 195, Official misconduct and obstruction of public servants generally, states:

A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit:

1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or
2. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a class A misdemeanor.

A public servant who commits official misconduct is not necessarily acting for a pecuniary reward, although the act is committed with “a specific intent to obtain a benefit or to injure another person or deprive another person of a benefit” in which “the benefit required [is] more than merely tangential and [has to have] a nexus personal to the defendant...[or] benefit to another person [that] must be at least indirectly of benefit to the accused, as, for example, a benefit to the accused’s family, to a friend or to the accused’s business.”²⁰

Several examples of official misconduct come from the following cases. In *People v. Perlman*, defendant, the mayor of the Village of Pine Hill in Ulster County, threatened the village’s clerk that if she testified against his wife in a harassment case, she would lose her job. The clerk appeared at trial but did not testify and was subsequently removed from her position. The Supreme Court of New York found that his threat was enough to constitute official misconduct. “Verbal expressions constitute acts just as do physical movements. Defendant spoke in his capacity as mayor to a subordinate, expressing the threat of loss of her job if she testified against his wife...These expressions constituted an unauthorized exercise of his official functions.”²¹

In another case, *People v. Maloney*, defendant was an Albany police officer who became intimate with a woman and bore a child with her. After the birth, as a result of financial problems and a lack of assistance from defendant, the woman began a proceeding in Family Court. The result was that defendant was ordered to pay child support. Thereafter, defendant would drive his police car up and down the street in front of the woman’s apartment during the night, activate the siren, and shine the spotlight into the apartment. On another occasion, while on duty, defendant issued a traffic ticket to the woman’s mother for not wearing her seat belt when she actually was wearing one at the time. Defendant was convicted of official misconduct and harassment charges arising from other acts toward the woman.²²

White-Collar Crime

REVIEW QUESTIONS

1. A police officer who receives a free breakfast after investigating a break-in at the same restaurant is guilty of:
 - A. receiving reward for official misconduct
 - B. receiving unlawful gratuities
 - C. bribe receiving
 - D. extortion

2. A Department of Motor Vehicle employee agrees to issue a driver's license to a person in exchange for \$100. The employee is guilty of:
 - A. bribery
 - B. bribe receiving
 - C. extortion
 - D. tampering

3. A police officer who uses the department's computer system to check the driving records and criminal histories of potential employees for a friend's trucking business is guilty of:
 - A. official misconduct
 - B. bribery
 - C. bribe receiving
 - D. extortion

4. Using the scenario in #3, the truck driver meets the police officer at a party and offers him \$300 to run the driver's checks and criminal histories of potential employees. The police officer declines his offer. The truck driver is guilty of:
 - A. bribery
 - B. receiving unlawful gratuity
 - C. receiving reward for official misconduct
 - D. no offense was committed

5. Which of the following areas is regulated by the Environmental Conservation Law?
 - A. underage drinking
 - B. defendants' rights
 - C. moving violations
 - D. greenway rights

REFERENCES

- ¹ Morgan, T. (1989, February 8). Man indicted in toxic dumping. *The New York Times*.
- ² Man charged in mercury contamination of soil. (1993, October 21). *The New York Times*.
- ³ People v. Cooperage Co., Inc. and Rosenberg (72 N.Y. 2d 579 (1988))
- ⁴ Melvin, T. (1991, July 21). State adopts Greenway concept for Hudson Valley. *The New York Times*.
- ⁵ Revkin, A. (1995, November 27). Operation Bucky: When the deer is a decoy and a hunter is the prey. *The New York Times*.
- ⁶ People v. Lauricella (222 N.Y.S. 2d 503 (1961))
- ⁷ People v. Woodford (379 N.Y.S. 2d 241 (1975))
- ⁸ 522 N.Y.S. 2d 934 (1987)
- ⁹ 526 N.Y.S. 2d 230 (1988)
- ¹⁰ 409 N.Y.S. 2d 736 (1978)
- ¹¹ People v. Hyde (141 N.Y.S. 1089 (1913))
- ¹² (1998, July 18)
- ¹³ (1998, July 18)
- ¹⁴ (1999, December 17)
- ¹⁵ Rashbaum, W. (2006, July 1). Admitting free work on apartment, Kerik pleads guilty to accepting gift. *The New York Times*.
- ¹⁶ Moore, R., Swartz, T., & Dillon, N. (2006, July 2). Kerik's name removed from New York jail. *New York Daily News*.
- ¹⁷ Roberts, S. (2006, July 16). With arrests of legislators, hard questions about power, perks and temptations. *The New York Times*.
- ¹⁸ 316 N.Y.S. 2d 289 (1970)
- ¹⁹ 535 N.Y.S. 2d 411 (1988)
- ²⁰ People v. Esposito (545 N.Y.S. 2d 468 (1989))
- ²¹ 503 N.Y.S. 2d 174 (1986)
- ²² 650 N.Y.S. 2d 342 (1996)

ANSWERS

1. B; 2. B; 3. A; 4. A; 5. D