

CITY OF NEW YORK
OFFICE OF THE DEPUTY COMMISSIONER OF INVESTIGATION
City School District of the City of New York

ED STANCIK
DEPUTY COMMISSIONER

**AN INVESTIGATION INTO THE SEX CRIME CONVICTION OF
FORMER PERSONNEL ADMINISTRATOR JERRY OLSHAKER
AND THE CONCEALMENT OF THE CONVICTION BY
THE DIVISION OF PERSONNEL**

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GROUNDS FOR INVESTIGATION

On June 9, 1987, Jerry Olshaker, Administrator of the Office of Support Services at the Division of Personnel ("DOP") in the Board of Education ("BOE"), pled guilty to sexual assault of a female child under the age of thirteen in the State of New Jersey. His repeated acts of sexual abuse spanned a six year period, from approximately 1979 to 1985, during which the victim was aged around eight to fourteen. In July 1991, this Office received information from a confidential informant suggesting that Olshaker had failed to report his arrest and subsequent conviction to the BOE.

CONCLUSION

Jerry Olshaker did report his arrest to his immediate supervisor at DOP, Geri Morganteen, albeit more than four months after the date of its occurrence on January 7, 1987. However, a small group of top level DOP executives, all long-time colleagues and self-described friends of Olshaker, covertly undertook to review his criminal conduct and fitness for continued employment themselves, in a manner calculated to conceal his arrest and conviction from the public and other BOE officials. The review process, flagrantly inconsistent with BOE regulations, glossed over Olshaker's criminal activities, affording him preferential treatment because of his special relationship to the executives reviewing his case.

Chancellor's Regulation C-105 required the DOP executives to immediately report Olshaker's arrest to the Office of Personnel Security ("OPS") and the Office of Legal Services ("OLS") and to convene a Personnel Review Panel ("PRP") to review Olshaker's case and determine whether he should be retained. Instead, Morganteen, Olshaker's supervisor and the Deputy Director of DOP, Howard Tames, another Deputy Director of DOP, James Stein, the Director of Appeals and Review at DOP, and Edward Aquilone, the Executive Director of DOP, all long-time associates of Jerry Olshaker and members of Aquilone's closely-knit, policy-making cabinet, quietly settled the matter among themselves by designating themselves as the reviewing panel. To further insulate Olshaker's criminal conduct, a decision was made not to notify a Chancellor's representative, although he was required to participate in the review process as a member of the panel. Because two of the members of the review panel were by regulation to come from DOP in this particular instance, the executives' exclusion of the Chancellor's representative could be for one purpose alone - to keep Olshaker's wrongdoing secret.

Despite the existence of two official BOE documents reflecting that Olshaker's crimes had been reviewed by a PRP recommending his retention, the evidence demonstrates that no fact-finding review occurred. The members of Olshaker's PRP, Stein, Tames and Morganteen, knew very little about the facts of Olshaker's crimes

And, yet, chose not to ask him for any additional information. Indeed, the evidence shows that Stein himself completed the documents reflecting the conclusions of Olshaker's review panel even though there had not been a fact-finding review. Morganteen and Tames merely signed the documents.

The PRP documents were then falsified to hide the fact that the review of Olshaker's case was improperly disposed of by his long-time colleagues and friends at DOP. Tames signed the documents as the Chancellor's representative and Stein inserted "OSS" - the abbreviation for the Office of School Safety - after Tames's name, thus creating the false impression that an OSS official designated by the Chancellor had participated in the review process, as specifically required by BOE regulations. Stein also assigned a bogus PRP file number to the documents, to further suggest that the review process was entirely ordinary.

The falsified documents were then concealed from the public and other BOE officials. Instead of being filed with the Office of Personnel Security ("OPS") and an entry made in the OPS computer system, Olshaker's PRP file was tucked away in the top drawer of Stein's desk, where it was kept for the past four years, until obtained by this Office in July 1991. Thus, an ordinary review of the relevant BOE file and computer records would uncover no evidence that Olshaker had been convicted of a crime or that he had been the subject of a PRP proceeding.

DISCUSSION OF FACTS

Olshaker's Arrest And Conviction

According to court records obtained by this Office, on January 7, 1987, Olshaker and the victim told investigators at the Monmouth County Prosecutor's Office in New Jersey that Olshaker sexually abused the victim, a female child, from approximately 1978, 1979 or 1980, when she was around seven, eight or nine years old, through August 1985, when she was fourteen. Olshaker told New Jersey authorities that the child frequently spent time with his family and in his custody because she was his daughter's best friend and their neighbor in Matawan, New Jersey.

Olshaker admitted that, on approximately eight or nine occasions, while walking hand-in-hand with his daughter and the girl through shopping malls, he pulled the victim's hand towards his genitals and pressed it against his penis. On other occasions, when the child came to visit his daughter at home during the day, he sat her on his lap and rubbed her hand on his penis. There were also times when she stayed overnight at the Olshaker house that he entered the room where she lay sleeping with his daughter, sometimes wearing nothing but underwear, and exposed his genitals, fondled her buttocks and pressed her hand against his penis, while hugging and kissing her. The last time this happened was on her

fourteenth birthday in August 1985.

The victim finally told her parents about the sexual abuse in December 1986, after watching a television program on child molestation.

Olshaker was then arrested on January 7, 1987 in Monmouth County, New Jersey, and charged with sexual assault in the second degree, endangering the welfare of a child in the third degree, criminal sexual contact in the fourth degree and endangering the welfare of a child in the third degree. Olshaker was indicted on these same charges on April 3, 1987. He pled not guilty on May 1, 1987. However, on June 9, 1987, he pled guilty to the most serious count, sexual assault in the second degree. On September 18, 1987, he was sentenced to three years probation conditioned upon his undergoing psychotherapy and not having unsupervised contact with adolescent girls, among other things.

On June 27, 1991, a decision was rendered against Olshaker ordering him to pay \$460,518.97 in civil damages to the victim and her family for sexual assault of a minor.

Standard BOE Procedure for Reviewing Employee Arrests

Whenever a BOE employee is arrested, Chancellor's Regulation C-105 requires that the Office of Personnel Security ("OPS") and the Office of Legal Services ("OLS") be notified immediately¹ and that the criminal behavior be reviewed by a specially designated Personnel review Panel ("PRP") to develop a recommendation on the employee's eligibility for continued employment. One of the areas singled out by BOE regulation for special concern is sexual assaults. The panel is directed to review sex crimes with "close scrutiny," especially sexual assaults against children.

The PRP is to consist of three members: a chairperson from DOP, another person from the division where the employee works, and a third person from the Office of School Safety ("OSS"), designated to be the Chancellor's representative.²

The review procedure calls for the arrested employee to explain his or her case to the panel, which can ask questions, hear witnesses and review physical evidence. The panel then submits its recommendation to the Executive Director of DOP on an official

¹Chancellor's Regulation C-105 does not make clear who is to make the notification. Further, nowhere is it stated that the arrested employee is under such a duty.

²Under this structure, anytime an employee from DOP or OSS is reviewed by a PRP, two of the three members on the review panel come from that employee's division.

document designed for PRP proceedings ("PRP document"). This document becomes part of the employee's PRP file, which is immediately assigned a file number. At the conclusion of the process, after the Executive Director has approved or disapproved the recommendation, the PRP file is sent to OPS, where it is filed and entered into the OPS computer system.

The PRP proceeding, which is normally tape-recorded, may be appealed to the Executive Director of DOP, who appoints an appeal panel headed by the Director of Appeals and Review of DOP.

Olshaker's Failure to Report His Arrest in a Timely Fashion

One week after Olshaker's arrest, the Monmouth County Court House sent a letter, dated January 14, 1987, to the BOE, indicating that Olshaker was a "defendant" and requesting employment information on his pursuant to a criminal investigation. DOP personnel delivered the letter to Olshaker himself.

Olshaker, who had not reported his arrest to anyone in the BOE, asked his subordinate and friend, Mary Hendrickson, to answer the letter. He also told her to keep quiet about the inquiry, which she did.

It was not until four months later that Olshaker reported his arrest to BOE officials. Olshaker insisted that the reason he reported his arrest late was that he had just then been informed that he was denied Pretrial Intervention, a program dismissing indictments against select defendants who successfully complete pre-sentence "probation" terms. Tames, however, suggested that Olshaker reported his arrest only because he was concerned that local publicity regarding his indictment might get back to BOE officials. In fact, Olshaker himself admitted that he was greatly concerned about the local articles published on his indictment.

Mary Hendrickson, for her part, gave in to the coercion inherent in any supervisor's request for a special favor of this sort from a subordinate. In response to the Monmouth County Court House letter, she described Olshaker as "excellent," "honest," and as having a "cooperative, humane" attitude. (The letter is annexed hereto as Exhibit 1).

How DOP Handled Olshaker's Review

When Olshaker's supervisors finally learned about his arrest months later, they combined to conceal it from the public and other BOE officials.

A few days prior to April 14, 1987, Olshaker finally notified his immediate supervisor, Morganteen, Deputy Director of DOP, of his arrest. Olshaker testified before the Office of the Deputy Commissioner of Investigation ("this Office") that he told

Morganteen that he had engaged in "some minor sexual contact" with his daughter's girlfriend that involved "touching" and holding her hand on his genitals. Olshaker stated that the girl's parents reported him to the police and that he intended to plead not guilty. Morganteen, however, who knew very little about the nature of Olshaker's offenses until she learned of them from this Office, stated that Olshaker merely told her that he had "touched" or "rubbed against" his daughter's girlfriend, without more detail. Morganteen stated that, even though Olshaker tried to make light of the matter, she knew at the time that it was serious. Yet, despite this knowledge and her admission that Olshaker was "vague," Morganteen did not ask for additional information.

Morganteen notified Stein, the Director of Appeals and Review at DOP, who informed Aquilone, the Executive Director of DOP. Shortly thereafter, Tames, another Deputy Director of DOP, was also brought into the circle of executives privy to the arrest.

It was decided within this circle to convene a PRP to review Olshaker's arrest. However, the PRP was to exclude a Chancellor's representative, who, in the instant case, would have been, by BOE regulation, the only panel member not from DOP. Instead, the panel was to consist of Stein, Morganteen, and Tames, all long-time DOP associates and friends of Olshaker who knew him for at least fifteen years. Further, Olshaker and the panel members met weekly as part of a ten-member, policy-making cabinet headed by Aquilone, the DOP Executive Director, who was ultimately to decide Olshaker's fate.

Aquilone and the panel members defended their covert handling of the review, citing the "magnitude of Olshaker's position," the "sensitive nature" of the case and the need to be "discreet." Tames, however, provided the most credible explanation when he commented that "everyone is family."

The First Purported PRP Proceeding³

Stein, who was to lead the panel, spoke to Olshaker. Stein testified before this Office that Olshaker told him that he had

³ The review of Olshaker's criminal behavior was divided into two distinct parts - a first and second PRP proceeding. The first purported PRP proceeding was triggered by Olshaker's notifying his supervisor of his arrest. This review panel concluded, as described below, that Olshaker's employment should be conditionally continued pending a disposition in the criminal case. The second purported PRP proceeding, consisting of the same members as the first, commenced with Olshaker's notifying James Stein that the criminal case was concluded and that he had been sentenced. The second review panel concluded, as described below, that Olshaker should be retained unconditionally.

"improperly touched his neighbor's daughter" and intended to plead not guilty to the charges. Although Olshaker claimed to have described in more detail what he did to the child, Stein testified that Olshaker did not do so. Stein, at any rate, did not admit to knowing the specifics of Olshaker's crimes and, moreover, told this Office that he chose not to ask.

Stein continued to testify that he personally completed the document reflecting the results of the review proceeding, indicating that Olshaker had been charged with criminal sexual contact with a minor in the second, third and fourth degrees, that the alleged acts occurred from 1982 to 1985,⁴ and that he intended to plead not guilty. The recommendation in the document was to retain Olshaker conditionally pending the disposition of court proceedings. (The first PRP document is annexed hereto as Exhibit 2).

However, despite the existence of this document detailing the purported proceeding, the evidence shows that no fact-finding review was held. While Olshaker remembered appearing before the PRP, Morganteen and Stein could not recollect whether one was convened, and Tames was sure there was no PRP proceeding. Morganteen, at any rate, added that she never discussed the case with Tames. Furthermore, none of the DOP executives could remember anything at all about what occurred during the PRP. Lastly, the PRP proceeding, if in fact one occurred, was not tape-recorded, as was standard procedure.

The most complete recollection of how Olshaker's review was actually handled is Tames's. He specifically remembered Stein asking him to sign at least one of the two documents reflecting Olshaker's reviews, on which the panel's recommendation had already been typed. Tames recalled signing the document without a fact-finding review, simply on the basis of the information in the document and his personal knowledge about his long-time friend, Olshaker. While Morganteen could not specifically remember Stein handing her such a document for the first proceeding, she said it was possible that Stein did so and that she signed it simply upon his recommendation. Further consistent with Tames's testimony is Stein's recollection that he typed the document himself and gave it to Tames and Morganteen for their signatures.

Furthermore, that the question whether to retain Olshaker was never truly debated, as it would have been in a valid PRP proceeding, is evident from the fact that Stein, who normally handled appeals of PRP proceedings, led Olshaker's proceeding.

⁴ If the executives reviewing Olshaker's case had obtained Olshaker's court records, however, they would have seen that his sexual offenses actually spanned a six year period, from approximately 1979 to 1985.

Even Stein admitted that no one reviewing Olshaker's case expected him to appeal, suggesting it was clear to all the members of the panel at the outset that the results would be in his favor. Moreover, at the time of Olshaker's purported reviews, Stein had never sat on a PRP. Tames, for his part, had participated in only one other PRP during his sixteen years as an administrator at the BOE.

The PRP document was then presented to Aquilone, who signed it but refused to approve the panel's recommendation, crossing out the pre-printed "approved" and replacing it with "accepted."

Aquilone said he informed Acting Chancellor Schonhaut and Ken Standard, then-Director of OLS, about the details of Olshaker's arrest. Standard and Schonhaut, however, offered a different story. Standard said Aquilone only casually "mentioned" that Olshaker had been arrested for some minor child abuse. He stated that Aquilone did not discuss the details and made no request for a legal opinion. Consistent with their informal conversation, Standard did not open a file on Olshaker.

Schonhaut, in consonance with Standard's testimony, recalled Aquilone informally mentioning that Olshaker had been arrested for some minor touching involving a child. However, he stated that Aquilone told him that no disciplinary action would be taken against Olshaker until the disposition of his criminal case.

Shortly after signing the first PRP document, Aquilone also asked Mal Higgins of the Inspector General's Office to obtain a copy of Olshaker's indictment from the Monmouth County Prosecutor's Office and to find out whether there were any previous indictments against Olshaker. This information was sent to Aquilone in May. Although Aquilone did not recall giving the documents containing this information to the panel members, Stein testified that he saw them. Stein also admitted he never showed them to Morganteen or Tames, who did not ask for them. Morganteen and Tames confirmed to this Office that they never saw or asked for the charging documents. (The indictment is annexed hereto as Exhibit 3).

The Second Purported PRP Proceeding

Olshaker pled guilty on June 9, 1987 and was sentenced to three years probation on September 18th, conditioned upon his undergoing psychotherapy. He reported this to Stein, who admitted that he never asked Olshaker any of the details surrounding his guilty plea. Olshaker, who confirmed Stein's not asking him any questions, remembered, however, that Stein specifically told him "not to worry."

Although Stein claimed he informed Tames, Aquilone and Morganteen that Olshaker had pled guilty and had been sentenced to three years probation before completing the document reflecting the

results of the second panel, Morganteen claimed she did not even become aware that Olshaker's case had been resolved until this Office so informed her four years later. Tames, who was interviewed twice by this Office, at first also denied knowing that Olshaker had pled guilty, but then in the second interview claimed to have recalled knowing it, although he could not remember who told him. In any event, Tames admitted not knowing the facts surrounding Olshaker's guilty plea.

Stein reported on the second PRP document, dated September 21, 1987, that Olshaker had pled guilty to criminal sexual assault in the second degree, the most serious charge, and was sentenced to three years probation conditioned upon his undergoing psychotherapy. Nevertheless, Stein recommended retaining him, citing his continued psychotherapy, the absence of adverse publicity⁵ and, curiously, the lack of a nexus between the conviction and his duties. (The second PRP document is annexed hereto as Exhibit 4).

The evidence that no second PRP proceeding was convened is overwhelming. Both Morganteen and Tames were sure of it. Morganteen specifically remembered Stein handing her the PRP document, already filled out, and telling her to go along with the recommendation to retain Olshaker because he was undergoing psychotherapy and because it was impossible to terminate a civil servant.⁶ This account is consistent with Tames's, who also recalled Stein presenting him with a prepared PRP document and asking for his signature, even though he only remembered signing the first or the second. At any rate, Morganteen specifically remembered signing the second PRP document, and Tames recalled signing at least one of the two documents, without a fact-finding review and without knowing the specifics of Olshaker's crimes. Further, neither of them ever saw, or asked to see, the indictment or court sentencing report in Olshaker's file - documents that should have been reviewed during a PRP proceeding.

Although Stein could not specifically recall whether a second review was held, his recollection that he personally typed the documents reflecting the recommendations of the PRP and brought

⁵ It is hardly surprising that there was no adverse publicity given the great efforts expended by DOP to keep Olshaker's conviction secret.

⁶ Morganteen's earlier claim that she was unaware that Olshaker's case had been disposed of and her inconsistent assertion here that she signed the PRP document, which clearly indicated that Olshaker's case had been disposed of, demonstrates her failure to examine the PRP document leading to Olshaker's retention, as discussed more fully below.

them to Morganteen and Tames, is consistent with Morganteen's and Tames's testimony that there was no fact-finding review. Again, only Olshaker, whose testimony on this point was not credible, said a second PRP proceeding was held.

Aquilone again tried to shun responsibility for the review process by refusing to "approve" the panel's recommendation, crossing out that word and replacing it with "accepted."

Failure To Find Out The Facts

Despite the self-evident need, and the clear mandate in the Chancellor's Regulations, to review Olshaker's criminal sexual assault on a child with "close scrutiny," none of the four DOP executives made serious effort to learn even the fundamental facts of his crimes. Neither Stein, Tames, Morganteen, nor Aquilone knew how old the victim was, what Olshaker did to her, where on her body he touched her, what "criminal assault in the second degree" meant, or how many years the sexual abuse spanned - even though that information was readily available.

What is more, the executives chose not even to ask Olshaker for this information. They defended their actions, contending that it was difficult to ask a long-time colleague about such lurid acts. Morganteen stated she was uncomfortable and did not want to get involved. Tames testified that he felt his friend needed "consolation," not questioning. Indeed, Tames claimed there was no need for him to try to obtain additional information because he already knew that his friend was an "honorable" person - so much so that Tames claimed he believed Olshaker was innocent and pled guilty just to avoid embarrassment.

While Tames and Morganteen openly admitted they made no efforts to find out additional information surrounding Olshaker's crimes, Aquilone insisted he did attempt to do so, but was frustrated by the Monmouth County Prosecutor's Office. Curiously, that Office was quick to cooperate with this Office in providing all information requested. Even Aquilone admitted he was aware that he could have readily obtained that information with Olshaker's consent. However, he defended his failure to ask Olshaker for such consent, saying that he did not know whether he had the "legal right" to ask - notwithstanding the Chancellor's legal staff that was available to assist him. Aquilone acknowledged that, had the Chancellor's representative from OSS not been excluded from the PRP, that person would, in all likelihood, have known how to obtain the necessary information.

Tames, Morganteen and Aquilone further avoided their responsibilities when they joined in Stein's recommendation and endorsed the two PRP documents without understanding the information contained in the documents. For instance, Aquilone and Tames falsely assumed that, because Olshaker was convicted of a

crime "in the second degree" and was sentenced to "probation," rather than prison, his crimes were not serious. Morganteen, for her part, believed that the dates on the document, "1982--1985," referred to the years during which Olshaker knew the victim, not during which he abused her, notwithstanding the clear meaning of the phrase "Date of Occurrence" above the dates.

Falsification of The PRP Documents

Both documents reflecting the recommendations of Olshaker's PRPs were falsified to conceal the clandestine manner in which Olshaker's colleagues disposed of his case. First, a bogus PRP file number - 41487 - was assigned to the documents.⁷ According to the Assistant Director of OPS, PRP file numbers, which run sequentially, have not reached that high a number. Further, no record of that number could be found in the OPS computer system or in any BOE files. While Stein did not specifically remember assigning the number to Olshaker's file, he admitted personally typing everything else on the PRP documents and could offer nothing to suggest anyone else assigned it.

Second, Tames signed both PRP documents on the line designated for the Chancellor's representative, and "OSS," the abbreviation for the Office of School Safety, was inserted after his name in the first document. This created the false impression that a Chancellor's representative from OSS had participated in the review process, as specifically required by BOE regulations. Tames, however, admitted that he never worked at OSS and that there was no Chancellor's representative on Olshaker's review panel. Tames further pointed out, under oath, that "OSS" inscribed after his name was not in his handwriting. A review of that handwriting suggested it was in Stein's. Although Stein could not specifically remember inscribing "OSS," even he admitted that it looked like his handwriting.

Olshaker's Contact With High School Students

Ignoring the common sense precautions dictated by the nature of the charges pending against Olshaker, the four DOP executives responsible for Olshaker's continued BOE employment failed to ensure that he not have direct contact with high school students. In fact, Mary Hendrickson stated that she assigned eight such students, both boys and girls, to report directly to Olshaker during the summer of 1987 as part of the summer intern program. Furthermore, in disregard not only of common sense but also of the terms of Olshaker's sentence, the two following summers other high

⁷Tames suggested that the number, 41487, which purported to be a PRP file number, might refer to the date on which Stein typed the document.

school students, also boys and girls, were again assigned directly to Olshaker.⁸

Although Aquilone and Morganteen said they were concerned about Olshaker's not having contact with adolescents, they never discussed it with Mary Hendrickson, who was in charge of assigning high school students within DOP. Furthermore, according to Olshaker, Aquilone told him that he would make Olshaker's continued employment contingent upon his signing an agreement not to have contact with adolescents at work. However, no such agreement was ever presented to Olshaker when his employment was continued. Interestingly, neither Aquilone, Tames, Stein, nor Morganteen mentioned such an agreement.

Concealment of Olshaker's Crimes

With Olshaker's PRP file complete, the DOP executives made efforts permanently to conceal his arrest and conviction for the repeated sexual abuse of a young child. Aquilone gave the entire PRP file to Olshaker himself, who gave it to Stein. Neither the file itself nor any information about its existence was entered into the appropriate computer tracking system. In fact, the file was placed in Stein's desk drawer in 1987, where it remained for the next four years until it was obtained by this Office in 1991, according to Stein.

Moreover, although Aquilone stated that he informed Acting Chancellor Schonhaut about Olshaker's second PRP, Schonhaut stated that Aquilone led him to believe that the criminal case against Olshaker had been dismissed, thus further assuring the concealment of Olshaker's wrongdoing.

Finally, a Chancellor's representative, who is ordinarily a member of OSS, was excluded from Olshaker's review panel. Since a majority of the panel members were by regulation to come from DOP in this instance, the exclusion of a Chancellor's representative appears to have been for one purpose alone - to keep Olshaker's crimes a secret.

Effect Of Knowing The Truth

Morganteen, Aquilone, Tames and, to a lesser degree, Stein, were visibly shaken when told about the facts surrounding Olshaker's crimes by investigators from this Office. With the exception of Stein, they asserted that, had they known the truth, they would have decided the matter differently.

⁸ Olshaker was reassigned in January 1990 to the Division of Support Services for reasons unrelated to any disciplinary matter, according to Thomas Ryan, Executive Director, Division of Human Resources.

RECOMMENDATIONS

The results of this investigation call for recommendations addressing both the individuals who played a role in the concealment of Olshaker's crimes as well as the institutional deficiencies in the personnel review process.

The Individuals

James Stein

In considering the roles of the executives involved, it is apparent that Stein, generally regarded as the "guru"⁹ on all disciplinary proceedings, played the lead role in orchestrating the concealment of Olshaker's crimes. He sat on the review panel although his normal role was to hear appeals from such panels. He completed the PRP documents, passing them off as the considered recommendations from a review of the facts surrounding Olshaker's crimes, although no such review ever occurred. He avoided asking questions of Olshaker aimed at revealing the truth. He withheld the charging documents in Olshaker's file from Morganteen and Tames. He inserted "OSS" after Tame's name on the first PRP document to suggest that the Chancellor was properly represented by a member of the Office of School Safety. He assigned a bogus PRP file number to the documents. Finally, he placed the entire PRP file in his desk drawer where it remained for four years until obtained by this Office, thereby ensuring that there would be no discoverable physical file or computer record evidencing Olshaker's conviction and purported PRP proceedings.

Although Stein ordinarily administers the appeal review process and does not sit on PRPs, his role in the Olshaker review demonstrates his willingness to afford special favors to certain high-level executives, especially when they are also friends.¹⁰ It

⁹ While Morganteen specifically referred to Stein as the "guru," Tames also described him as the expert on disciplinary proceedings.

¹⁰ Significantly, by Stein's own admission, there was only one other instance in which he sat on a PRP. The individual in question on that occasion was again a high-level BOE employee, William Ubinas, the superintendent of Community School District One, who was convicted of crimes involving narcotics. As with Olshaker's PRP, a Chancellor's representative was excluded from the Ubinas PRP. The review panel was drawn exclusively from within the Division of Human Resources (formerly the DOP). Stein himself again prepared the recommendations on the PRP document. Aside from some perfunctory questioning of Ubinas, Stein made no serious effort to discover the facts surrounding Ubinas's crimes or his

is therefore the recommendation of this Office that strong disciplinary action be taken against Stein. At a minimum, Stein should be removed from his current position and barred from any further participation in PRP and appeal proceedings.¹¹

Geri Morganteen and Howard Tames

While Morganteen and Tames did not lead the effort to conceal Olshaker's wrongdoing, they actively collaborated with Stein in doing so. They endorsed the fraudulent PRP documents Stein completed, knowing there had been no fact-finding review. Like Stein, they knew little about the nature of Olshaker's crimes and deliberately refrained from asking questions. They chose to remain ignorant even to the meaning of the information contained on the PRP documents they endorsed. Tames, moreover, contributed to the falsification of the PRP documents by signing as the panel member representing the Chancellor.

Morganteen's and Tames's willingness to ignore their acknowledged responsibilities as members of Olshaker's review panel, affording him preferential treatment because of their special relationship, calls for a penalty similar to Stein's.

false representation to the BOE that he had no criminal record. Instead, Stein accepted at face value Ubinas's assertion that his false statement to the BOE that he had never been convicted of a crime was an honest mistake based on Ubinas's belief that he had been granted youthful offender treatment for the narcotics conviction. Stein's handling of the Ubinas PRP proceeding was especially troubling, given that at the very time he was undertaking to make a recommendation concerning whether Ubinas should remain in his office, this Office was conducting an in-depth investigation into Ubinas's prior conviction and false representation concerning that conviction. Stein showed questionable judgment in recommending that any action, especially that of continued employment, be taken regarding Ubinas while an investigation into the matter was pending. Fortunately, the questionable wisdom of taking any action concerning Ubinas while this Office's investigation was in progress was apparent to Thomas Ryan, who declined to accept Stein's recommendation. Shortly thereafter, this Office found that Ubinas lied about his conviction to the BOE and other government agencies on four separate occasions. This Office then recommended that severe disciplinary action be taken against Ubinas, which could include the termination of his employment. A decision regarding the disciplinary action to be taken is pending with the BOE and the NYS Commissioner of Education.

¹¹ During the course of this investigation, and after Stein's examination, this Office learned that Stein intends to retire in October of this year. Stein's retirement, however, does not change this Office's recommendation.

While Morganteen and Tames are not ordinarily involved in PRP proceedings at any level, it is the recommendation of this Office that they be disqualified from any future participation in such proceedings and that disciplinary action be taken against them.

Ed Aquilone

Ed Aquilone, as the Executive Director of DOP, must be assigned full responsibility for the acts of his deputy directors. He cannot insulate himself from their inappropriate conduct by crossing out the word "approved" on the two PRP documents and inserting "accepted" before signing his name. In fact, Aquilone's effort to take refuge in semantic subtleties, a vivid display of "bureaucratese," demonstrates his own concern over the Olshaker PRP process.

Aquilone, along with Stein, created a review panel which would not only guarantee a result favorable to Olshaker, but would also ensure the proceedings' secrecy. Aquilone, too, like Stein, Morganteen and Tames, knew little of the crimes to which Olshaker had pled guilty when he endorsed the panel's recommendation to retain Olshaker. Aquilone, further, diminished the gravity of Olshaker's crimes from then-Chancellor Schonhaut and, later, even led Schonhaut to believe that Olshaker's criminal case had been dismissed. Finally, Aquilone returned the official PRP file to Olshaker himself, instead of having it filed with OPS and logged into their computer system.

Aquilone's conduct cannot go unpunished. Although he has retired, he occasionally works for the BOE as a consultant. It is the recommendation of this Office that appropriate disciplinary action, which can include the suspension or termination of future consultant assignments, be taken against Aquilone.

Mary Hendrickson

Olshaker placed his subordinate, Mary Hendrickson, in a very difficult position when he asked her to complete the inquiry from the Monmouth County Court House without telling anyone of his arrest. Nevertheless, Hendrickson's conduct in hiding the arrest of a BOE employee, even that of her superior, cannot be excused. While it may mitigate the gravity of the offense, no employee should be able to insulate illicit conduct under the veil of following orders. However, Hendrickson's inappropriate conduct is further diminished by the substantial lack of clarity in the Chancellor's Regulations governing the reporting of employee arrests (discussed below). For these reasons, it is the recommendation of this Office that no disciplinary action be taken against her.

Jerry Olshaker

While it may at first appear that Olshaker properly reported his arrest and cooperated fully with the PRP, a closer examination reveals otherwise. Olshaker concealed his arrest from the BOE for more than four months, very possibly disclosing it only because of a concern that local publicity might reach BOE officials. In fact, he took affirmative steps during this four month period to keep his arrest secret: he asked his subordinate, Hendrickson, to respond to the criminal court's inquiry and to remain quiet about it. Even when he did finally report his arrest, and later his conviction, he grossly minimized his criminal conduct. Most recently, Olshaker lied to this Office by insisting that two PRP proceedings had been held to review his crimes and that he had fully disclosed the nature of his criminal conduct to the panel members.

Quite simply, it is inappropriate and unacceptable for the BOE to employ in a high-level position a repeat sex offender of children. To permit otherwise would shatter the public's confidence in its educational system. Add to this Olshaker's failure to timely report his arrest, his compromising the integrity of his subordinate, Mary Hendrickson, his false representations to the PRP, and his continued false representations to this Office, and one must conclude, as does this Office, that Olshaker must be permanently dismissed from the BOE.¹²

Institutional Deficiencies in the Personnel Review Process

This investigation demonstrates the need for a complete revision of the personnel review process and the underlying regulations. While this report does not seek to address all the issues created by the regulations, several areas highlighted by the investigation require immediate attention.

In particular, although Chancellor's Regulation C-105 requires that OPS and OLS be notified immediately about employee arrests, it does not specify who is responsible for the notification. The responsibility must be borne by all employees, including the arrested employee.

Another area needing to be addressed concerns the composition of PRPs where the employee to be reviewed is assigned to DOP (now called the "Division of Human Resources") or to OSS. In such

¹² Since Olshaker's wrongful conduct includes more than his sex conviction, we need not address in this report whether a rehabilitated sex offender could ever perform a valuable function for the BOE.

cases, under current regulations,¹³ two of the three members of the review panel are assigned to the same division as that of the employee whose conduct is to be reviewed. To minimize the risk of unethical conduct and avoid the appearance of impropriety, this Office recommends a review structure wherein no two panel members come from the same division.

Finally, the absence of a real review in the Olshaker case underscores the need to define the purpose of PRP proceedings. If the purpose of a PRP proceeding really is, as described in the regulations, to "investigate current employees," then the panel must be required to test the veracity of the arrested employee by requiring production of the relevant court records, by calling witnesses and by seeking the assistance of the Office of Special Investigations, among other things. The bald assertion of the arrested employee must be scrutinized for what it is - the statement of an interested party. It should not, as happened in the Olshaker review, be embraced as the truth.

¹³Chancellor's Regulation C-105 provides that one member of the PRP is to be assigned from DOP, another member from the division where the employee works and the third member from OSS, designated as the Chancellor's representative.