The City of New York

POLICE DEPARTMENT

November 9, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Daniel DeSalvo
Tax Registry No. 938332
44 Precinct
Disciplinary Case No. 85400/09

Police Officer William Granacher
Tax Registry No. 934956
Firearms and Tactics Section
Disciplinary Case No. 85401/09

The above-named members of the Department appeared before me on August 25, 2011 and October 12, 2011, charged with the following:

Disciplinary Case No. 85400/09

1. Said Police Officer Daniel DeSalvo, while assigned to the 44th Precinct, January 5, 2008 having been assigned with another Police Officer from the 44th Precinct to escort prisoners from the 44th Precinct to Bronx Central Booking/Criminal Court, wrongfully did fail and neglect to assist detention facility attendants in searching and placing all escorted prisoners in cells, as required, resulting in the escape of one (1) prisoner from said detention facility.

P.G. 210 01, Page 4, Paragraph 28 – PRISONERS GENERAL PROCEDURE PRISONERS

Disciplinary Case No. 85401/09

1. Said Police Officer William Granacher, while assigned to the 44th Precinct, January 5, 2008 having been assigned with another Police Officer from the 44th Precinct to escort prisoners from the 44th Precinct to Bronx Central Booking/Criminal Court, wrongfully did fail and neglect to assist detention facility attendants in searching and

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placing all escorted prisoners in cells, as required, resulting in the escape of one (1) prisoner from said detention facility.

P.G. 210-01, Page 4, Paragraph 28 – PRISONERS GENERAL PROCEDURE PRISONERS

The Department was represented by Scott Rosenberg, Esq., Department Advocate's Office, and Respondents were represented by Stuart London, Esq.

Respondents, through their counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 85400/09

Respondent DeSalvo is found Guilty.

Disciplinary Case No. 85401/09

Respondent Granacher is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

Stipulation

On January 5, 2008, at approximately 1300, Respondents DeSalvo and Granacher, along with Police Officer Vincent Guzman, escorted 35 prisoners from the 44 Precinct to Bronx Central Booking (BCB), where they were placed in a holding pen[1] awaiting arraignment. At approximately 1650 hours, one of those prisoners, Person A,

[1] Also referred to as "the fishbowl" or "the well" in testimony.

was discovered missing after a head count was conducted by third platoon BCB personnel.

BCB video surveillance recording shows the arrival of the 35 prisoners, (including Person A). Four separate prisoner transport "daisy" chains secured the prisoners in groups of 15, 10, 5 and 5. They were placed in the temporary holding area with other prisoners who were being processed separately. Police Officer Edward Rosado, assigned to BCB, conducted a roll call of the 35 prisoners and handed movement slips to Police Officer Robert Hernandez, assigned to the intake part, who recorded all the prisoners as being present. Rosado and Police Officer Barry Stith searched the prisoners in Cell 4 before placing them in separate cells to await arraignment. As Rosado and Stith requested prisoners, Respondent DeSalvo uncuffed them and sent them down to Cell 4 to be searched. Respondent DeSalvo indicated that he never uncuffed more than three prisoners at one time and that the remaining prisoners remained secured. After the prisoners were searched, Respondent Granacher escorted the prisoners to the cell where they remained until arraignment.

At approximately 1350 hours, believing that all 35 prisoners were searched and secured in the rear cells, Respondents were reassigned to escort a sick prisoner to the hospital. About ten minutes later, Person A slipped out of the well and remained in the common area of BCB among other officers. Person A walked out of BCB at 1526 hours behind two detectives exiting with a prisoner, unnoticed by BCB personnel, and fled to parts unknown.[2]

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[2] According to the Assistant Department Advocate, Person A had multiple warrants, including one from Maryland for Murder. He is still being sought.

The Department's Case

The Department called Police Officers Edward Rosado and Robert Hernandez, and Sergeant Tony Telesco as witnesses.

Police Officer Edward Rosado

Rosado has been a member of the Department since August 2003 and is currently assigned to the Bronx Court Section, where he processes arrest paperwork, takes DNA samples and fingerprints, and conducts searches. On January 5, 2008, he was working a 0800 by 1600 tour at BCB, where he had been assigned, at the time, for five years. That day, he assisted Respondents with the processing of their prisoners.

According to Rosado, Respondents arrived with their prisoners at approximately 1300 hours, whereupon Rosado conducted a roll call of their 35 prisoners in the well. He called each prisoner from a roster, comparing their names and descriptions to the movement slips[3]; he determined that all the prisoners were accounted for. At the completion of the roll call, all the prisoners were still handcuffed to daisy chains. There were other prisoners, beside Respondents' 35, in the well at the time, although Rosado did not recall how many.

[Using a diagram of BCB he sketched (Department's Exhibit 1), Rosado described the well as a rectangular holding pen (about five to six feet by 15 feet) with "plastic glass inside" where incoming prisoners stay. It is three feet from a gate that leads to BCB's front entrance. Located on one side of the well is the desk sergeant and an area where police officers wait as they come in and bring their prisoners into the well

[3] Also referred to in testimony as "booking slips."

and where they wait for their prisoners to be processed. Located on the other side of the well are several other cells, including a cell where prisoner searches were conducted, about 20 feet down a hallway from the well. Opposite that cell is a computer station.]

After the roll call, Rosado handed the paperwork (roster and movement slips) to Hernandez at the computer station and Rosado and Stith proceeded to search Respondents' prisoners in the cell designated for prisoner searches. [Respondent DeSalvo] stood by the well, while [Respondent Granacher] stood by the cell area. From where he was conducting the searches, he could not see inside the well, only the entrance to the well and Respondent DeSalvo who stood at the well's entrance.

He and Stith each searched one prisoner at a time, and, upon finishing a particular search, he would call out to Respondent DeSalvo to send over the next prisoner or two. Rosado explained that because he and Stith were conducting searches simultaneously, if they completed their searches at the same time, two prisoners would be requested. Otherwise, if only one of the officers were done with his search, he would ask for one prisoner. He never asked for more than two prisoners at a time. He did not call the prisoners to him by name because there was no need for him to do so since he had already conducted the roll call and accounted for all 35 prisoners who were still attached to the daisy chains. He kept the prisoners under observation as they walked to him, unescorted.

It was the responsibility of the Respondent who stood by the cell area "to keep an eye on the prisoners and also indicate [to] them to go inside the cell, stand by the entrance of the cell." It was the responsibility of the Respondent who was at the well "to keep

guard of the entrance as well as unhandcuff prisoners and send them down to [Rosado] or [his] partner."

Rosado knew that he and Stith had completed the search of Respondents' prisoners when he asked Respondent DeSalvo if any prisoners were left to be searched and he was told there were none. The searched prisoners were placed in a cell "in the back" and the cell was locked. He did not recall what time the search of the prisoners ended. He, Stith and Hernandez remained in "that back area" until they were relieved by other officers at the end of their tour at 1600 hours. He did not conduct another roll call prior 1600 hours to because there was no need or requirement to do so. He was not aware that a prisoner had escaped from BCB until his union delegate informed him of such at home.

On cross-examination, Rosado admitted that he was "accused of not properly safeguarding prisoners" as a result of this incident, and received a Command Discipline and the loss of five vacation days. He agreed that what he did on January 5, 2008, was what he had done every day for the five years before that date, and that he is still assigned to BCB now. He agreed that the well is a "fairly narrow holding cell," that gets crowded and the area right outside the well "can be congested with the activity of prisoners coming in and out." When he conducted the roll call, he called out the prisoners' names from the entrance of the well in the presence of Respondents. There were other prisoners already in the well, but he did not know how many.

The well has since changed as a result of this incident. While it remains the same size, metal gates and floor-to-ceiling Plexiglas has now replaced the former "[h]alfway metal and halfway Plexiglas" enclosure. Additionally, the gate opposite the well that led

to the BCB exit used to be "half metal and half mesh" with a defective lock that would open when the gate was shaken. There was no key to this unmanned gate and, to open it, one used a piece of metal to wedge "in the entrance at the edge of the door and it would open." Rosado agreed that subsequent to the escape, the gate and the lock was changed, and a person now mans the gate.

At the time of the incident, Respondents, upon arriving at BCB, handed the movement slips over to Rosado, who conducted the roll call with the slips. Rosado then gave the slips to Hernandez at the computer station as he (Rosado) proceeded to commence searching prisoners. Respondent Granacher was in his vicinity, "by the cell area in the back." There was no system of counting the prisoners as they went back to him to be searched, and he did not have the movement slips anymore to check off each prisoner that was searched. Rosado agreed that he would have no idea that he was one prisoner short. Only Respondents' 35 prisoners were being searched at the time, not the others in the well. No one was checking to make sure that 35 prisoners, not fewer, were being sent to him.

Now, the procedure regarding movement slips has also changed. Rosado said the roll call is no longer conducted. Instead, "[a]s the prisoners come in, officers hand over [their] movement slips to us, we verify that there is a prisoner coming down, we lodge them in our location or place them n our location and we hand over the movement slip over to the Department of Correction[]." He agreed that with this system, he would have known that 34 prisoners came down to him, not 35. This change in protocol took place after the escape.

Rosado agreed that on January 5, 2008, BCB was supposed to handle about 300 prisoners but he did not know if there were 400 prisoners there that day, 100 more than what the capacity was supposed to be. Rosado also agreed that movement slips were never scanned individually ["with a machine scanner"] before the incident date. Currently, officers bring the movement slips to BCB personnel, who check them and ensure that the slips "have certain stamps to qualify [the prisoners] to be placed in [BCB's] custody." He agreed that "today, if a prisoner came to the back, there is a procedure in place where he is marked off based on the movement slip as someone who is no longer in the holding area." The previous method for accounting for prisoners entailed conducting the roll call in the well and handing over the movement slips to the officer at the computer station.

Rosado concurred that members of the service are required to wear their shield on their outermost garment, prior to the incident and today. There has been a directive that members of the service are to challenge anyone not showing an ID card. On January 5, 2008, undercover officers had their ID or shield on their outermost garment.

On redirect examination, Rosado said the lock on the entrance gate was in a damaged condition on January 5, 2008, and it had been like that since he started working there five years prior.

On recross-examination, Rosado agreed that the gate which led outside did not have a working key other than a metal object that people would use to jimmy it open, and it had been like that since he started working there five years prior. That is completely changed now.

Upon questioning by the Court, Rosado reiterated that he accounted for Respondents' 35 prisoners with a roll call based on a roster and movement slips, then gave the slips to Hernandez for input into the computer. After Rosado searched the individual prisoners, they were not cross-checked against the movement slips before they were placed in the cell. After the searches, Rosado directed the prisoners from the search area to the cells where they remained awaiting arraignment. Respondent Granacher was by that cell and also indicated to them to step in. The cell door was closed "[w]hen everyone was there."

Police Officer Robert Hernandez

Hernandez has been a member of the Department since August 2005 and is currently assigned to the Bronx Court Section, where he is responsible for securing and processing prisoners. On January 5, 2008, he was working a 0733 by 1600 tour at BCB. His post was the computer station and he was tasked with changing the status of prisoners from "lodged out to lodged in" and tracking the locations the prisoners are assigned to.

According to Hernandez, after Rosado conducted the roll call and informed him that everyone was present, he (Hernandez) notified the sergeant of the 35 prisoners' arrival and changed the prisoners' lodging location from the 44 Precinct to BCB [in the computer]. He did not conduct any searches, but he saw the searches, which occurred in the cell directly across from his post. The searches lasted approximately 30 minutes and was conducted by Rosado and Stith.

Hernandez said the officers conducting the searches would yell, "Next," and Respondent DeSalvo would uncuff a prisoner at the well and send him down the hallway.

While the individual prisoners were not escorted down the hall way, they were under observation of the uncuffing and searching officers "[b]ecause there [was] a direct line of sight. The prisoners had no other place to go." Respondent Granacher was at the back cell. After the searches were completed, Hernandez made phone calls from his post "to move the prisoners upstairs." Subsequent to the completion of the searches, he remained in that area and did not leave, as he had to stay with the prisoners and was only allowed to leave for personals and meals. Rosado and Stith remained in the back with him.

Prior to being searched, the prisoners were held in the well, located about 25 feet from the computer station. Hernandez could not see the well area from his post because there was a wall and he could not see down the hallway. He did not pass the well except as he was departing at the end of his tour at 1600 hours.

Hernandez learned of the missing prisoner at about 2300 hours that night while at home. As a result of this incident, he received a Command Discipline and the loss of five vacation days.

On cross-examination, Hernandez denied doing anything wrong with regard to this incident, but accepted the Command Discipline and the loss of five vacation days because he did not want it to result in charges. He agreed that "if something happened it would have been failure to safeguard prisoners." There was nothing he would have done differently that he did wrong or negatively on the day in question.

Hernandez, who has worked at BCB since 2005, said there have been security improvements and structural upgrades as a result of what occurred on January 5, 2008. The well has been fortified with new fencing and Plexiglas and its frame strengthened. The entrance and egress is now a door with a buzzer instead of the "slide fence" that was

opened by "press[ing] down with a pen or some kind of metal device." This interior gate that did not need a key to open it led to another door that led to the street. The door is now a manned post, which it was not when the incident occurred.

Hernandez also agreed that prisoners can no longer be lodged in a precinct overnight prior to being brought to BCB. Now, when prisoners are brought o BCB, they stay there until the Department of Correction (DOC) meets their full capacity. He believed that at the time of the incident, the capacity BCB was meant to hold was 150 prisoners. While he could not recall the specific number of prisoners there that day, Hernandez said Saturday counts were "usually…in the high 300s, almost 400." He said at the time, it would be "pretty accurate" to have 400 prisoners in the system, 250 more prisoners than BCB's capacity to hold.

While the prisoners walked past Hernandez at the computer station, from Respondent DeSalvo to Respondent Granacher, Hernandez was inputting the movement slips in the computer. This part of the process is now handled by DOC. Additionally, Respondent Granacher's role in the procedure at the end of the hallway has been modified to include two police officers who supervise the metal-detector scanning of prisoners and the emptying of their pockets.

Hernandez agreed that he left work at approximately 1600 hours, unaware that a prisoner escaped at around 1525 hours. He knew that Respondents had brought in 35 prisoners from the movement slips Rosado gave him, and he listed the prisoners' names in the logbook even before Respondent DeSalvo began uncuffing prisoners for their searches. The roll call was conducted in the well by Rosado, and there were no subsequent roll calls or checks and balances to confirm that 35 prisoners had walked

down that hallway. When asked if this system is still in place, Hernandez replied, "We don't control that side of the cell now," and agreed that DOC controls it.

Hernandez approximated that, on the day of the incident, Respondents left BCB at 1500 hours; it did not refresh his recollection when told that it was at about 1400 hours. He did not remember that they were ordered by a sergeant to escort a prisoner to the hospital. He denied being aware of when Respondents left BCB or when the last prisoner was uncuffed by Respondent DeSalvo, searched, and put into a cell by Respondent Granacher. His only contact with Respondents was "[j]ust, Hi and that kind of stuff." He, physically, was not involved in the uncuffing or searching process, and had nothing to do with any of the 35 prisoners who were lodged in the well and were supposed to be escorted to the back.

On redirect examination, with regard to whether there were checks and balances to ensure that all the prisoners made it from the well to the search area, Hernandez said when prisoners are moved upstairs their names are called before they are escorted to another location. Additionally, when the next tour takes over, a roll call of that floor is conducted. He relied on the movement slips that Rosado gave him to determine who had been uncuffed and sent down to be searched. The officer uncuffing prisoners at the well was responsible for notifying the officer conducting the searches that all the prisoners from the well had proceeded to the search area.

Sergeant Tony Telesco

Telesco has been a member of the Department since April 1997 and has been assigned to his current command, the Bronx Court Section, since September 2007. On

January 5, 2008, he was working a 1421 by 2305 tour at BCB as the operations sergeant covering the intake desk and supervising the BCB staff and any officers who were bringing in prisoners. Sometime during Telesco's tour, he learned that a prisoner was missing. He launched an investigation but the prisoner was not ever located.

According to Telesco, in January 2008, when police officers arrived at BCB with prisoners, the prisoners were placed in the well, cuffed, "[m]ostly for security purposes." Officers escorting prisoners to BCB would assume posts, one at the door of the well and the other in the back area where the lodging cells are located and where the searches are conducted.

It was the responsibility of Respondent DeSalvo, as the officer assigned to the well on the day of the incident, "to maintain visual and physical observations of [his] prisoners at all time, to make sure they don't lose track of [his] prisoners that [were] in the well." The prisoners in the well are ultimately sent down to be searched and lodged. The officer at the well is instructed verbally by BCB officers to send prisoners down for searches. Prisoners in the well should be uncuffed as they are requested by the officer conducting the searches. Outside of any special circumstances (such as a prisoner requiring medical attention or a prisoner being assaulted by another), it is not permissible for the officer at the well to uncuff his prisoner prior to the request being made by the BCB officer to send down another prisoner.

Regarding the number of prisoners who should be uncuffed by the officer at the well at one time, Telesco said, "Just the number of prisoners requested by the Bronx Court Section staff." If two prisoners are requested, "[t]he best option would be to unhandcuff one prisoner[] and send [him] down to be searched and then unhandcuff the

next and send [him] down rather than uncuffing two prisoners...For safety reasons. To keep track of the prisoners. You want to make sure that when you uncuff[] one, you do not lose track of them." Telesco believed that the officer at the well should be counting the prisoners to ensure that the prisoners being sent down for searches is the same amount being requested, to keep track of his prisoners.

It was the responsibility of Respondent Granacher, as the officer assigned to the rear cell, "to receive the prisoners from the well..., put them in a search cell, watch them be searched and then subsequently upon instruction lodge them in the holding cell." This officer worked with Rosado and Stith, who were responsible for searching the prisoners; and Hernandez, who was tasked with making log and computer entries. Telesco stated that Respondent Granacher was also responsible for working with his partner and maintaining the prisoner count. To "[m]ake sure that the amount of prisoners he that brought in was [the] same amount that were to be lodged in those cells; one at a time as they came down the hallway and probably totaling them up at the end and making sure the number was accurate...To confirm the count that his partner was doing at the well post."

Telesco said that Hernandez, Rosado and Stith did not keep track of the prisoners being sent down by Respondent DeSalvo, nor should they have, as that was not their responsibility. He explained, "Their responsibility [was] to search those prisoners and make sure they are in the cell and that's it. They also have other prisoners that they [had] to watch that [were] already [in] the cell as well so that is their main responsibility."

In 2010, DOC assumed some of the duties at BCB, such as maintaining the cells where the prisoners are held prior to arraignment. According to Telesco, this had nothing to do with the escaped prisoner that was involved in this case.

On cross-examination, Telesco admitted that as a result of this incident, he received a Command Discipline and the loss of five vacation days. He reiterated that it was his responsibility to supervise the Bronx Court Section staff and any officers bringing in prisoners to BCB. At that time, he "didn't go to the well and ask every escorting officer who this prisoner belonged to," and he would do that differently now.

On January 5, 2008, Telesco began his duties at the desk, located to the side of the well, at about 1500 hours. Cameras behind the desk enabled him to see other areas in BCB. At the time, he was not aware if Respondents were even in BCB. He learned that they left at 1400 hours and were no longer there when he took over the desk, or even when his tour started at 1421 hours. He did not witness any of the uncuffing, searching or lodging of the prisoners, which was done before his day even began.

Some improvements have been made to BCB since January 2008. The gate that leads to the exit which once did not need a key to open it now has a magnetic lock. It now works in conjunction to the new exit door which also has additional magnetic locks; one has to be closed in order for the other one to be buzzed open. In the well, a new door, new Plexiglas and some of the metal borders were changed. DOC has taken over the duties at the end of the hallway, where prisoners were searched and put into the cell.

Telesco said that at the time of the incident, the maximum capacity at BCB was about 190 prisoners. He did not know how many were there that day but agreed that the number was above the maximum number that BCB could handle. He learned later on

that the prisoner had walked out of BCB at 1526 hours, while he (Telesco) was at the desk. His view (from the desk) of the gate that led to the exit was obstructed by another desk, a corner and possibly officers who were standing in the area. He agreed that his view was obstructed and he would not see if the prisoner were standing right outside the well. As the cameras were changed recently, he could not remember if the positioning of the cameras would have allowed him to see a person milling around outside the well. He concurred that the area around the well could be "chaotic" with prisoners inside the well and outside the well were uniformed and undercover officers, Emergency Medical Service personnel, and other officers bringing in their prisoners. He had no recollection of the prisoner milling around outside the well at approximately 1515 hours and did not become aware that he was missing until about 1600 hours. He conducted an investigation and canvass, to no avail.

Telesco was aware that 35 prisoners had been brought in that day but he was unaware that anyone was missing, or that Respondents were no longer at BCB, when he started at the desk at 1500 hours. He also had no idea at that point, that at 1526 hours, a prisoner walked out at BCB. He first heard Respondents' names "probably" at his official Department interview but had no previous contact with them. He did not recall being told at the interview that there was no misconduct on behalf of any specific officer or supervisor.

On redirect examination, Telesco said he was not aware of any other prisoners escaping from BCB prior to January 5, 2008.

On recross-examination, Telesco said DOC's assumption of the searching and lodging duties was implemented to reduce arrest arraignment time. The modified or

fortified security measures were "put in place to assist the officers in keeping their prisoners." He agreed that he was at the desk at 1526 hours on the day of the incident and it was he who buzzed people in and out of BCB. He recalled physically seeing and buzzing out two plainclothes detectives escorting a rear cuffed prisoner, as he had an unobstructed view "[o]nce those detectives reached the part of the staircase where the red door that heads to the street is." The door to the street had a buzzer but the interior gate had a latch door that did not require a key or have a buzzer. He did not see another individual at that time and did not see that someone had followed the detectives and their prisoner out. Once Telesco pressed the buzzer and the detectives exited, he looked down and resumed writing in the command log. He never saw the prisoner escape behind the detectives. The video he saw did not show how the prisoner got past the gate door.

On questioning by the Court, Telesco said he was unable to see the prisoner on the screen because no camera was directed at the area between the gate [and the door]. His observations of the area were by his own eyes, not by camera surveillance. He speculated that because of his obstructed view, the prisoner, just prior to escaping, stood close to the exit door with his back against the wall, undetected by Telesco.

Respondents' Cases

Respondents testified in their own behalf.

Respondent DeSalvo

Subsequent to Respondent DeSalvo's graduation from the Police Academy in December 2005, he was assigned to the 70 Precinct for a year and a half, and then he was

transferred to his current command, the 44 Precinct. On January 5, 2008, he and Respondent Granacher transported 35 prisoners from the 44 Precinct to BCB. Upon arriving at BCB, the prisoners were unloaded from two transport vehicles and Respondents walked the prisoners into BCB. The prisoners, who were individually cuffed to a daisy chain, were placed in the well and the well door was closed behind them. Respondents did not hand any paperwork to the BCB officers; BCB already had the movement slips before they got there, and upon their arrival, a BCB officer accounted for the prisoners using the movement slips to conduct a roll call. There were other officers with prisoners in the well prior to the arrival of the 35 prisoners but he could not recall how many or which command they were from. The area around the well was a small amount of space with a lot of people coming in and out.

Respondent DeSalvo said his role at BCB that day was to stand outside the well, uncuff the prisoners and send them down to be searched. Respondent Granacher was to stand in the vicinity of the searches to make sure the prisoners were lodged into one or two cells. The prisoners were still attached to the daisy chain while they were in the well. At the searching officers' requests, Respondent DeSalvo would uncuff the prisoners, "whether it be one at a time or two at a time and possibly three at a time." He never lost sight of the prisoners as they were sent to the search area and he also maintained visual contact with Respondent Granacher. He did not individually call out the prisoners' names and then uncuff them; he just uncuffed the next prisoner. He did not wait until the prisoners got down to the end of the hall before uncuffing the next prisoner, as he was "told to unhandcuff and sen[d] another because they are calling, next again." Neither he

nor Respondent Granacher searched the prisoners at BCB. The latter's job was to put already-searched prisoners into another cell.

Respondent DeSalvo did not keep track of how many prisoners he uncuffed and he was never instructed to do that. He said there was no procedure regarding that and "[i]t was just a courtesy for the patrol officers lodging prisoners in [BCB] to help out the [BCB] officers." He did not recall how long the process took to uncuff the prisoners. He remembered uncuffing everyone that was on the daisy chain. When asked how he did not confuse his prisoners with prisoners that other precincts have placed in the well, Respondent answered, "You can't. There is just too many of them." He said his 35 prisoners were not on a single daisy chain and there may have been four or five daisy chains used. The BCB officers had the movement slips for the 35 prisoners, and he became aware that he was done and the last of his prisoners had been searched when the BCB officers, at some point, stop saying, "Next."

Respondent DeSalvo was not ever aware that one of the prisoners he uncuffed had not proceeded down the hallway; to his knowledge, every prisoner he uncuffed had proceeded to the end of the hallway. If he had uncuffed a prisoner and the prisoner did not proceed down the hallway but stayed in the well, Respondent DeSalvo would not have been aware of that. He agreed that was what happened on January 5, 2008.

At about 1400 hours that day, Respondent DeSalvo was assigned to transport a sick prisoner to the hospital and he stayed at the hospital until the end of his tour at 1540 hours. He did not become aware of a missing prisoner until he reported to work the following day.

On cross-examination, Respondent DeSalvo agreed that on January 5, 2008, he escorted and placed 35 prisoners on daisy chains in the well at BCB; and that he positioned himself at the entrance to the well and uncuffed prisoners, one, two or three at a time to be sent down to be searched by BCB personnel. Regarding whether he uncuffed multiple prisoners at a time before being instructed to do so by BCB personnel, he recalled admitting at his official Department interview that there were times when he "uncuffed them and they stood right out front with, it would be two at the most... Yes, because they would keep calling, you know, and I would uncuff them and, you know, there may[]be at least one left of them."

Respondent DeSalvo concurred that each prisoner is assumed to be dangerous and one must be prepared for a prisoner to attempt an escape. He agreed that, at times, he sent more than one prisoner at a time and he uncuffed more than one at a time. He did not count each prisoner that he sent down and, by the time he sent down what he considered to be all his prisoners, he was not certain he had sent down 35 but he assumed he did. He did not check with Respondent Granacher or any BCB officer to see if there was a count to make sure all 35 prisoners were lodged.

Respondent Granacher

Respondent Granacher was assigned to the 44 Precinct for about five years until his transfer to the Firearms and Tactics Section about a year and a half ago. On January 5, 2008, he worked a 0705 by 1540 tour and participated in the transport of 35 prisoners from the 44 Precinct to BCB. Upon arrival at BCB, the prisoners were unloaded from the transport vehicles and escorted inside. He explained, "[T]he whole transport is all

prearranged. The [BCB] desk sergeant calls our desk sergeant and lets us know that he wants our prisoners and then he calls us down so they are already expecting us." BCB already had the movement slips and a BCB officer used the slips to identify the prisoners and confirm their arrival to BCB via a roll call in the well.

After the roll call, Respondent Granacher was "instructed to abide by the unofficial escort procedures there. [He] took the responsibility of the officer that assists the [BCB] officers in placing them in cells after the search." He did not do any searching. Respondent DeSalvo was the officer who uncuffed the prisoners and sent them down to be searched by BCB officers, who would then pass them to Respondent Granacher to put them in the cell. He had a visual sight line with Respondent DeSalvo as he (Respondent DeSalvo) was uncuffing prisoners and as the prisoners walked down the hall. The process took about 45 minutes and after the prisoner he understood to be the last was uncuffed, sent down, searched and placed in a cell, he was "informed from somebody at [BCB] that [said] something like 'that's it.'" No other roll call was done to make sure he had received all 35 prisoners.

At approximately 1400 hours, on orders from the BCB sergeant, he and Respondent DeSalvo escorted a sick prisoner to the hospital. At that time he was not aware that all 35 prisoners had not gone to the back and it was his understanding that all 35 had been accounted for by BCB. He did not learn of the missing prisoner until his official Department interview the next day.

On cross-examination, Respondent Granacher agreed that he was responsible for the transport and lodging of the 35 prisoners he and Respondent DeSalvo brought to BCB; that the "unofficial transport duties" at BCB was part of his job even though, once

the roll call was conducted, BCB had assumed responsibility for the prisoners; and he was not free to leave BCB and had to stay there and assist BCB personnel until all the prisoners he transported had been lodged. Before he left BCB that day, he believed that all of his prisoners were lodged.

Respondent Granacher concurred that each prisoner is assumed to be dangerous and one must be prepared for a prisoner to attempt an escape. He agreed that he was positioned, on that day, by the rear cell, near where the BCB officers were searching the prisoners. He did not count the prisoners sent down by Respondent DeSalvo to make sure that at the end, all 35 were accounted for, nor did he take a tally of the prisoners placed in the rear holding cells. Although he had counted the prisoners three times prior (while before the precinct desk and while loading and unloading from the transport vehicles), he agreed that he had not counted them between the time they exited the well and entered the rear cell.

FINDINGS AND ANALYSIS

There is no serious dispute as to the facts of this case. On January 5, 2008, Respondents were tasked with taking 35 prisoners lodged at the 44 Precinct to Bronx Central Booking (BCB). When they arrived at the facility, they were further tasked with assisting in the process of lodging those prisoners at BCB. The prisoners were handcuffed together on several daisy chains and were placed in a holding area referred to as "the fishbowl" or "the well."

Respondent DeSalvo remained with the prisoners at the well. Down the corridor was an area where prisoners were searched. Respondent DeSalvo uncuffed a prisoner

who would walk down to the prisoner search area. After the search, the prisoner would proceed to an area where he would be placed in a cell. Respondent Granacher was outside this cell area. There was a clear line of sight between Respondents. They were supposed to watch each prisoner to make sure that he made it from the well, through the search and down into a cell.

Respondents completed their work and, believing that they had lodged all 35 of their prisoners, went on to another assignment. Indeed, at approximately 1350 hours, they were directed to take a prisoner to the hospital and left BCB.

Unbeknownst to them, one of their prisoners with a serious criminal history, Person A, did not make it to the cell area. He apparently was uncuffed by Respondent DeSalvo but, instead of going down toward the search area and then the cell areas, he drifted back into the well and mingled with other prisoners there. At 1526 hours, he followed two plainclothes detectives out the door and made his escape.

Respondents have made a number of arguments which they claim absolve them of responsibility in this escape. The first has to do with the chronology of the escape.

Respondents argue that because the escapee made his exit from the building at a time when they had already left the building, they cannot and should not be charged with his escape. Person A's escape was the determined effort of a brazen criminal who took advantage of multiple weaknesses in the system designed to hold him. The escape succeeded because of multiple failures by a number of officers. It was, in a sense, an inverted team effort. Respondents were a critical part of that team. The sloppy way in which they monitored prisoners going from the well to the search and cell areas gave Person A his first opportunity, an opportunity to slip away from the other prisoners. There

is no doubt that other officers failed to check to assure that all prisoners wound up in the holding cells. Still, others failed to challenge him as he left without displaying a shield but the escape could not have succeeded without this first critical failure by Respondents. The argument that the escapee actually left the building at a time when Respondents' were no longer there is of little weight. Their piece of the overall failure had been completed long before Person A made his final departure.[4]

Respondents have also argued that many things have been changed since the escape. For instance, the lock on one of the doors was antiquated and not working properly and has since been replaced. This is an obvious red herring. There is absolutely no evidence that the escape was caused or facilitated by the failure of that lock. The evidence is that the escapee walked out posing as a police officer without challenge. Other alleged problems with the facility are similarly unrelated to the escape. It should also be noted that a clever and determined criminal will take advantage of weaknesses wherever they exist and even a well-designed facility can be compromised when the guards are less than vigilant.

Respondents have also argued that they are being charged as a result of a kind of automatic or absolute liability imposed by the Department when a prisoner escapes. The evidence in this case suggest otherwise.

Respondents had a clear line of sight and were supposed to watch to insure that prisoners uncuffed from the daisy chain made it to a cell. In other words, they were a team sending prisoners from one form of secure hold to another, from being handcuffed

[4] Other officers were disciplined in this incident.

to a chain to being locked in a cell. They obviously failed in this effort. Consequently, it is their own action or inaction for which they are being held accountable.

Perhaps the best insight into how this happened came during the testimony of Respondent DeSalvo. He described their action as doing a favor or "courtesy" for the staff at BCB. There was no favor here; they were tasked with doing this job. It was part of their responsibility in lodging the prisoners. But even if it was favor, they were taking police action and they were responsible to do it correctly.

It is not possible to say exactly when and how the exact failure occurred but Respondent DeSalvo admitted to uncuffing more than one prisoner at a time, which might have given Person A his opportunity. Both Respondents admitted they did not do a count, which, while not required, would likely have prevented the escape. Determining that they made the error is simply enough derived from the fact that they brought in 35 prisoners and only 34 made it into the cells.

Respondents are each charged with one specification alleging that they failed to insure that all escorted prisoners were placed in cells resulting in the escape of one prisoner. Each Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, the service record of each Respondent was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent DeSalvo was appointed to the Department on July 11, 2005. Respondent Granacher was appointed to the Department on July 1, 2004. Information

from each of their personnel records that was considered in making this penalty recommendation is contained in attached confidential memoranda.

The Department has recommended a penalty of 10 vacation days for each Respondent. There have been numerous cases in which a penalty of ten vacation days has been imposed when a prisoner escapes (see, for example: Disciplinary Case No. 79105/03, approved, May 31, 2004; Disciplinary Case Nos. 78884/03 & 78885/03, approved, September 14, 2004; Disciplinary Case No. 83691/08, approved, March 5, 2009; Disciplinary Case No. 85125/09, approved, September 16, 2009; Disciplinary Case No. 2010-3202, approved, March 29, 2011).

Consequently, the penalty recommendation as to each Respondent is the loss of 10 vacation days.

Respectfully submitted,

Martin G. Karopkin
Deputy Commissioner – Trials

APPROVED
OCT 09 2012
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DANIEL DESALVO
TAX REGISTRY NO. 938332
DISCIPLINARY CASE NO. 85400/09

In 2008 and 2010, Respondent DeSalvo received an overall rating of 3.5 "Highly Competent/Competent" on his annual performance evaluation. He was rated 4.0 "Highly Competent" in 2009. [redacted]
He has no prior formal disciplinary record.

For your consideration.

Martin G. Karopkin
Deputy Commissioner Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER WILLIAM GRANACHER
TAX REGISTRY NO. 934956
DISCIPLINARY CASE NO. 85401/09

Respondent Granacher has received an overall rating of 3.5 "Highly Competent/Competent" on his last three annual performance evaluations. [redacted]. He has no prior formal disciplinary record.

For your consideration.

Martin G. Karopkin
Deputy Commissioner – Trials