

The City of New York

Commission to Combat Police Corruption

**PERFORMANCE STUDY: A REVIEW
OF THE NEW YORK CITY
POLICE DEPARTMENT'S BACKGROUND
INVESTIGATION PROCESS FOR THE
HIRING OF POLICE OFFICERS**

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January 1999

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I. INTRODUCTION

Throughout its work as the independent monitor of the New York City Police Department (“NYPD,” “Department”), the Commission to Combat Police Corruption (“Commission”) has assessed the effectiveness of the Department’s development and implementation of anti-corruption policies and procedures.¹ Central to building and maintaining a Police Department that is intolerant of corruption is the hiring of candidates possessing the highest level of integrity. If the Department hires an individual who is dishonest, has a history of violence, or has otherwise demonstrated a propensity for disregarding the law or acting in an inappropriate manner, the likelihood that he or she will engage in corrupt, brutal or other unacceptable conduct is greater, and the overall integrity of the police force may be undermined. The Department has therefore recognized the critical importance of selecting and hiring candidates of the highest integrity in stressing “that integrity . . . is of primary concern when selecting recruits.”²

It is generally believed that the method by which a police department can select candidates of the highest integrity is through a thorough background investigation of those core

¹ For example, the Commission has examined the Department’s disciplinary treatment of police officers who have made false statements during official proceedings (“The New York City Police Department’s Disciplinary System: How the Department Disciplines Its Members Who Make False Statements”, December 1996); and those who have been involved in off-duty misconduct; and the Department’s handling of corruption complaints made by both the general public and other police officers (“Performance Study: The Internal Affairs Bureau Command Center”, October 1997.) These, as well as other studies, have been carried out in furtherance of the Commission’s executive mandate to monitor the performance of the Department’s mechanisms for combating corruption. See Executive Order Number 18, signed by Mayor Rudolph Giuliani on February 27, 1995. A complete list of the published reports of the Commission is provided at the end of this report.

² NYPD’s response to the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department (“Mollen Commission”) recommendations regarding the Department’s hiring practices (July 1994) at p. 3.

components of a person's life that demonstrate the character of that individual. These include an individual's reputation among his or her friends and neighbors, disciplinary and academic record at schools attended, prior employment history and military record and contacts with the criminal justice system and traffic courts. As noted in a United States Department of Justice study,

[S]ince there is no infallible way to measure an individual's proclivity for corruption when no history of corruption is apparent, . . . [a police] department must examine the applicant's history of general conduct. The operational premise is: if a department hires an individual who has acted honestly up to present, that individual will **tend** to be honest in the future. On this premise, it is essential to determine, accurately and in detail, how the applicant has acted prior to the point of hiring by the department.³

Given the critical importance of background investigations in building and maintaining a Department of the highest integrity, the Commission decided to study a sample of investigations conducted by the Applicant Processing Division ("APD"), that part of the NYPD which is responsible for conducting the background investigations of all candidates to the Department.

A. Summary of Findings and Recommendations

This report describes the Department's background investigation and hiring processes. The report is the result of interviewing Department managers and supervisors responsible for hiring police officers, reviewing the Department's investigative standards relating to applicants as set forth in its investigative manual, reviewing statutes and rules which mandate certain hiring criteria, discussing hiring standards and procedures with other major police departments nationwide, and finally, exhaustively analyzing 115 background investigation files which document the

³ "Building Integrity and Reducing Drug Corruption in Police Departments" ("Building Integrity"), report produced by the International Association of Chiefs of Police for the United States Department of Justice, September 1989, at p. 16 (emphasis in original).

Department's review of candidate qualifications. Of these 115 candidates, all of whom were considered for the Police Academy class which commenced in April 1997, 95 were hired. The remaining 20 candidates were not hired because they did not meet the Department's qualifications.

Based on its review, the Commission concluded that all of the candidates in the Commission's sample who were hired met the Department's minimum eligibility requirements as well as those minimum requirements which are statutorily imposed, including never having been convicted of a felony or dishonorably discharged from a branch of the military service.⁴ Additionally, each candidate at the time of hire, in compliance with the Department's requirements: was a citizen of the United States, had attained 22 years of age, had completed a minimum of 60 college credits or served for two years in the military, possessed a valid New York State ("NYS") driver's license, and resided within New York City ("NYC") or one of the surrounding counties in NYS. Additionally, except for one case, none of the candidates hired had engaged in conduct which would have constituted grounds for presumptive termination under the Department's internal criteria for disqualification.⁵ In particular, the Department was in compliance in 100% of the cases reviewed with its standards for disqualification based on

⁴ In 14 background investigative files provided to the Commission, information related to sealed criminal cases and summonses was redacted pursuant to statutory requirements. The Commission's conclusions relating to the arrest/summons area are therefore limited to the remaining 81 files. For further discussion see pp. 54-55, below.

⁵ See discussion below of "In-House Disqualifiers" at pp. 18-21. The single case where the Commission found that a candidate was eligible for disqualification based on these internal criteria was brought to the Department's attention. The Department explained to Commission staff that it had thoroughly evaluated the candidate and had determined that the derogatory information, a second driver's license suspension within two years, was not sufficient cause to reject the candidate given the other positive factors in the candidate's background. The Commission does not contest the Department's determination in this case.

criminal convictions.

Moreover, in addition to reviewing cases where candidates had met the Department's qualifications and were hired, the Commission also reviewed a sample of candidates who were not hired to determine how the Department's standards were applied in those cases. Here too the Commission found that in each of these cases the Department was in compliance with its standards for disqualification as set forth in its internal criteria or those set by the legislature. The Commission determined that with respect to ensuring that each candidate possessed these mandated requirements, the Department performed appropriately.

While assuring compliance with mandated criteria is important, it is also critical that the Department comply with its own investigative standards for developing important information beyond the above-mentioned core requirements. Departmental procedures require background investigators to thoroughly explore a candidate's history. Investigators are required to communicate with the candidate's current and past neighbors, the academic institutions the candidate attended, and the candidate's prior employers, and to carefully probe the candidate's arrest and driving histories. In certain circumstances, personal contact, in addition to written correspondence, is required. The Commission found that while the Department's formal investigative standards are reasonably sound, these standards, particularly as applied, place too heavy a reliance in evaluating a candidate's character and fitness on written correspondence, rather than personal contact with those sources which had the best opportunity to interact with the candidate, particularly neighbors, prior employers and schools where the candidate attended. Indeed, absent the existence of specific derogatory information, the Department, as a matter of practice, does not establish personal contact with these sources. As described below, in a number

of cases there also was no personal contact prior to hiring even where there existed specific missing or derogatory information on completed forms.

While it may be true --as the Department contends-- that people hesitate to speak ill of those who they know, that does not mean that personal contacts cannot provide relevant insights into a candidate's suitability for service as a police officer. The Commission thus believes greater emphasis should be placed on establishing personal contact with these individuals and institutions; and that no one should be hired where there is a total absence of contact with anyone who knows the candidate. Indeed, based on its survey of other major police departments and federal law enforcement agencies,⁶ the Commission learned, it is the policy of these departments to make such personal contacts and it is their belief that such contacts are important.

Additionally, it is the Department's regular practice to hire police officers prior to completion of the full background investigation. Indeed, the Department hires candidates pending the receipt of important character information from the candidate's prior employers, schools, and from law enforcement agencies.⁷ This information, which relates to the candidate's disciplinary history, sobriety, and honesty may not be received until many months after the candidate is hired. The Department points out that, to some extent, this is a practical necessity given the time often available for investigations and the reality that employers and schools often do not return the relevant forms in a timely fashion.

⁶ The Commission surveyed the Dallas, Miami, Chicago, Boston and Los Angeles police departments related to this issue. Each of the departments surveyed make personal contact with a candidate's references. Additionally, federal law enforcement agencies surveyed by the Department view personal contact as a critical component of the background review process. See discussion of out-sourcing pp. 62-64.

⁷ Information regarding whether a candidate possesses the minimum requirements to become a police officer, as discussed above, is received prior to hire.

The Department also maintains that should it subsequently learn of information which bears on the hired officer's fitness, it can terminate the officer. Negative information, however, regarding an individual, may be evaluated very differently once that individual has been hired as opposed to if the Department had the information beforehand and could have exercised its discretion not to hire the individual in the first place, by exercising the Department's right to strike candidates under the one in three rule discussed below.⁸ Moreover, by the time negative information may be received, the Department will have expended significant resources training the officer and, depending on the time lag, armed an unsuitable individual and conferred upon him or her the enormous responsibilities of a police officer. If not completing background investigations, in part, flows from the inability of the Department to control the rate at which employers and academic institutions respond, and the demands placed on the Department to hire large numbers of candidates, that only provides additional reasons to have more personal contact with people who know the candidate before that person is hired.

The Commission recognizes that the burdens placed on the Department in this area are enormous. Indeed, in order to hire approximately 1,300 officers in April 1997, the Department screened over 8,200 candidates. Moreover, the Department's burden was dramatically increased when it was required, in March 1997, to hire approximately 600 additional officers for the April 1997 class, many of whose background investigations had not commenced prior to that notification. To assist the Department in improving the hiring process, the Commission has formulated a series of recommendations which are set forth below.⁹

⁸ See footnote 34 at pp. 16-17.

⁹ These and additional recommendations are more fully described below at pp. 59-76.

1. Heightening Field Investigations

- The Department should take steps to ensure that its investigators are vigilant in establishing more meaningful and personal contact with the candidate's neighbors, academic institutions, employers, and local law enforcement agencies. Importantly, investigators should be instructed to contact at least some neighbors, at either the candidate's current residence or where the candidate grew up, who actually know the candidate. The current investigative standard for neighborhood contacts can be satisfied by speaking to people who do not know the candidate.

2. Staggering the Hiring Process and Out-sourcing

- To enable Department background investigations to be performed more effectively, continued attempts should be made to reduce class sizes by staggering hiring over the course of a year.
- As a further measure to ease the burden of hiring large numbers of police officers, the Department should consider out-sourcing a percentage of background investigations to private contractors.

3. Revising the Department's Internal Hiring Criteria

- In order to avoid a misperception of what conduct the Department considers acceptable, the Department should review its criteria for presumptive disqualification to determine whether it would be effective to make these criteria more restrictive. Specifically, the Department should review:
 - Whether recent misdemeanor criminal convictions, regardless of whether the underlying arrest was for a felony, should be considered as a basis for presumptive disqualification.
 - Whether the Department should take a stricter view towards a candidate's prior driving violations, including: multiple suspensions and hazardous moving violations.¹⁰

¹⁰ The Department currently considers these violations in evaluating a candidate's qualifications and, in practice does not appear to hire individuals who have the number of violations its criteria would allow. The Commission believes, however, that the Department's current criteria, by being too permissive, create an impression of laxness in standards.

4. Expanding Departmental Disqualifiers to Include Review of Youthful Offender Adjudications

- While the Department currently reviews the facts and circumstances surrounding youthful offender adjudications, the Department should consider the proximity of the incident to the date of application and develop a standard for presumptive disqualification.

5. Use of Polygraph Examinations in the Hiring Process

- The Commission recommends that the Department continue its consideration of utilizing polygraph examinations in the hiring process and make a final determination on this issue within the next six months.

6. Enhancing Certain Disclosure Forms Used By Background Investigators

- The Department should enhance several of its background investigation forms to secure broader and more comprehensive disclosure from the candidate and to encourage individuals or institutions who had contact with the candidate (neighbors, academic institutions, employers, and law enforcement agencies) to be more forthcoming.

II. PRIOR STUDIES OF THE NYPD'S HIRING PROCESS

This study follows-up and builds on previous studies of the Department's hiring practices conducted by the Department and by outside agencies and consultants. These previous studies examined hiring criteria, as well as the quality and efficiency of the Department's background investigations, and made specific recommendations for improving the hiring process. The issues that these studies addressed, and some of the recommendations made, are revisited in this study, but this study principally focuses on the specific investigative standard that the Department has created for background investigations, and whether current hiring practices meet that standard. This study thus principally functions as an audit of the quality of the Department's background investigations.

In order to place the Department's present hiring practices within the appropriate context,

the Commission has reviewed the previous studies and the changes made by the Department in the wake of their recommendations. A summary of the three previously cited studies follows immediately below.

A. **The June 1993 Study**

In June 1993, the Department's Personnel Bureau ("PB") conducted a study ("June 1993 Study") to determine whether "common predictive characteristics exist among members of the service arrested for corruption."¹¹ For the period January 1, 1990, through April 1, 1993, the PB identified 38 uniformed members who were arrested on charges of corruption. The PB reviewed the pre-employment data developed by APD pursuant to its background investigation of these individuals to determine whether there were any indicators in their backgrounds which would demonstrate a propensity for engaging in corrupt behavior.¹² The study determined that while some of the 38 officers did have negative indicators in their backgrounds, arising most frequently in their driving, employment, and arrest/summons records, the study concluded that, except for one case, there were insufficient negative factors revealed during the background investigation which would have caused the Department to disqualify the candidate.¹³

¹¹ The June 1993 Study findings are contained in a memorandum dated June 23, 1993, from the Chief of Personnel to the Police Commissioner.

¹² Additionally, the PB analyzed post-employment data to determine whether these individuals, once they were employed by the Department, engaged in conduct which would have triggered heightened monitoring before the corrupt offenses were committed. Relative to this second aspect, the study concluded that in at least 23 of the 38 cases reviewed, warning signs were present which should have triggered increased scrutiny. See June 1993 Study at p. 5.

¹³ That officer had a poor driving record, had received two criminal summonses, and had a poor employment history, which included one termination for dishonesty. The June 1993 Study, as opposed to this report, did not review the quality or adequacy of the underlying background investigation.

B. The McKinsey & Company, Inc., Study

In August 1993, McKinsey & Company, Inc. (“McKinsey”) prepared a report entitled, “Strengthening the Effectiveness of the New York City Police Department Applicant Processing System,” (the “McKinsey Study”). Without evaluating the quality of the background investigations conducted by APD, the study analyzed the overall hiring process and how effective it was in meeting two of the Department’s primary goals: “hiring individuals who are both most qualified and who represent the racial diversity of New York City.”¹⁴

The McKinsey Study contained recommendations to improve the efficiency of the hiring process. While many of the recommendations were implemented, one is particularly relevant to the Commission’s study. McKinsey recommended that the Department obtain legislative approval to mandate the size and timing of classes to allow the Department to “plan and routinize hiring periods and classes.”¹⁵ The Commission’s findings parallel this recommendation. While we do not believe that legislative intervention is essential, the Commission believes the Department should make reducing class sizes by spreading hiring throughout the year an ongoing priority. Doing so will greatly reduce the tremendous strain placed on APD resources when inordinately large classes are hired within a short time frame, and allow time for more thorough background investigations.¹⁶

¹⁴ McKinsey Study at p. 1.

¹⁵ *Id.* at p. 40.

¹⁶ The Commission recognizes, of course, that funding may become available in unplanned ways from city, state, or federal sources which leads to relatively sudden increases in the size of a class. For further discussion of the Commission’s findings in this area, see pp. 61-62.

C. The Mollen Commission Findings

In July 1994, the Mollen Commission reported its findings (hereinafter, "Mollen Report"). As part of its analysis of the Department's recruitment and screening procedures, the Mollen Commission reviewed the background investigations of approximately 400 officers dismissed or suspended for corruption or serious misconduct between 1988 and 1994.

In its sample, the Mollen Commission found that 24% of the officers had a prior criminal arrest record and that Departmental admission criteria were lax in that they permitted the hiring of individuals with misdemeanor convictions or youthful offender adjudications¹⁷ based on underlying felony arrests.¹⁸ Additionally, the Mollen Commission found that 88% of the officers in its study were admitted to the Police Academy before the completion of their background investigations.¹⁹ Based on interviews with Departmental staff, the Mollen Commission learned that older recruits and recruits with a college education or military experience were often less susceptible to corruption.²⁰

At the conclusion of its study, the Mollen Commission made a series of recommendations, a number of which were implemented by the Department. These recommendations included:

¹⁷ Under New York Criminal Procedure Law ("CPL") Article 720 ("Youthful Offender Procedure"), upon the conviction of a youth charged with a crime committed when he was at least 16 years old and less than 19 years old, or upon the conviction of a juvenile of 13, 14, or 15 years of age charged with murder or certain other violent crimes -- see CPL Section ("Sec.") 1.20 (42) -- a criminal court may, if it finds in its discretion that the interests of justice would be served by relieving such a youth or juvenile from the onus of a criminal record, grant such a person youthful offender treatment whereby said youth or juvenile is found not to have a judgment of criminal conviction.

¹⁸ Mollen Report at p. 113, July 1994.

¹⁹ *Id.* at p. 113-114. See discussion of this issue below at pp. 30-34.

²⁰ *Id.* at p. 115.

- Raise the minimum entry age from 20 years of age to 22 years of age. This recommendation was implemented by the Department in June 1996 and the Commission's sample is derived from the April 1997 class, the first subject to this new requirement.
- Raise the minimum education requirement from a high school diploma to a two-year college associate degree. The Department implemented this recommendation in June 1996 by requiring all applicants to have a minimum of 60 college credits or two years military service. The April 1997 class was the first class subject to this requirement.
- Require all applicants to submit to a polygraph examination on selected topics before hiring. While the Department has not implemented this recommendation, it continues to review this issue.²¹
- Require random, unannounced drug testing for all applicants rather than administering drug tests as part of pre-scheduled applicant processing. The Department has implemented this recommendation.²²
- Require that background investigations be fully completed before a recruit enters the Police Academy. As noted above, while the Department did determine that each candidate had the minimum requirements to become a police officer prior to enrollment

²¹ The Commission is recommending that the Department continue to review and evaluate the use of pre-employment polygraph screening. See discussion below at pp. 66-69.

²² During the application process and before admission to the Police Academy, candidates are randomly tested for illicit drug use based on urinalysis. Just prior to admission to the Police Academy, candidates are again tested, this time based on a hair sample. Hair testing is more reliable than urinalysis to determine whether an officer has used illegal drugs, inasmuch as residual evidence of narcotics can be detected in hair samples up to approximately 90 days subsequent to the last use. According to the Department, approximately 3% of pre-Academy candidates fail the urinalysis drug test, while about 5-6% test positive for illegal drugs based upon the hair test.

in the Academy,²³ it is the Department's practice to hire officers before completion of the full background investigation.

- Consider misdemeanor convictions based upon felony arrests for violent and drug-related crimes and felony youthful offender adjudications for violent and drug-related crimes presumptive grounds to disqualify a candidate. The Department has developed standards for disqualification which include the consideration of misdemeanor convictions based on felony arrests.²⁴ Although the Department has not made youthful offender adjudications for violent and drug-related crimes presumptive grounds for disqualification, APD investigators do examine a candidate's youthful offender and juvenile delinquent records.²⁵
- Expand recruitment efforts from the military services and administer Department entry examinations on military bases. The Department has partly implemented this recommendation: recruitment drives are carried out at military installations throughout the Northeastern United States.

²³ See discussion below at pp. 17-18 for a description of these minimum requirements.

²⁴ See discussion below at pp. 18-21.

²⁵ The Department requires that each applicant sign a release which authorizes all law enforcement agencies to provide records of the applicant to the Department. This release is part of a general "Authorization For Release Of Information" (APD-25) that each candidate is required to execute as part of the application. Although the APD-25 does not explicitly address access to juvenile delinquent and youthful offender records, the Department uses this form to obtain such records. While the use of the APD-25 generally allows the Department access to juvenile and youthful offender records, the Commission believes that CPL Sec. 720.35(2) ("Youthful offender adjudications; records") and CPL Sec. 725.15 (relating to the sealing of juvenile offender records) should be amended to explicitly provide police departments access to an applicant's youthful offender and juvenile delinquent records. A law requiring disclosure of juvenile and youthful offender records to law enforcement agencies conducting background checks not only signals that it is in the public's interest to have access to these records when considering whether or not to hire a police officer, but will more easily facilitate the release of the records by an agency than a waiver by the candidate does.

III. THE HIRING PROCESS: AN OVERVIEW

A. Summary of Hiring Process and Civil Service Issues

To become a NYPD police officer, all candidates must first take the Civil Service Examination. This examination is administered by the Department of Citywide Administrative Services (“DCAS”) and is periodically offered according to the hiring needs of the Department. The examination is aimed at testing those abilities and skills that have been identified as necessary to NYPD officers.

After scoring the examination results, candidates are ranked according to how well they performed on the test. DCAS then certifies a list of those individuals who have passed the examination in order of test results. This certified list is then submitted to the Department so that it may begin contacting and screening possible candidates.

After DCAS provides a certified list to the Department, candidates are notified that they have passed the exam and are to report to APD for a screening interview, agility test and medical examination.²⁶ The screening interview consists of the candidate filling out a screening sheet providing basic background information about the candidate, including criminal convictions, if any, and other data fundamental to the Department’s hiring criteria.²⁷ The agility test consists of determining the candidate’s body fat composition and ability to pull the trigger of a gun a

²⁶ During this phase of the hiring process, the Medical Section is given a list of about 100 candidates each day. Generally, about 80 candidates report for examination with the remaining 20 dropping out of the process.

²⁷ This is in addition to a comprehensive disclosure form, known as the Personal History Questionnaire (“PHQ”), which the candidate completes at a later time. The PHQ is also known as the APD-5. See pp. 69-73 for further discussion.

requisite number of times.²⁸ If the candidate passes the agility test, a medical examination is given in which the applicant's vision, height, weight, heart and hearing are tested, and the candidate completes an extensive personal medical history questionnaire and is interviewed about that history. If the candidate passes these examinations and there are no automatic reasons for disqualifying the candidate (e.g., a felony conviction in his or her background), then APD begins the character investigation.²⁹

The final part of the hiring process is the psychological review. The review is conducted by the Psychological Services section of the Department, and consists of a battery of written psychological tests, including the Minnesota Multiphasic Personality Inventory ("MMPI"), the Cornell Index, and the California Personality Inventory, and a one-on-one interview with the candidate. The personal interview takes place only after the written psychological tests have been scored and analyzed. During the interview, the Department attempts to answer several questions about the candidate: 1) Does the candidate have particular psychological problems that might prevent that person from responsibly possessing a firearm while defusing a potentially dangerous situation; 2) Can the candidate withstand stress; and 3) Does the applicant exhibit biases toward particular groups of people. About 20% of the candidates fail the psychological

²⁸ At this stage of the screening process, women are required to have no more than 32.2% body fat, while men must not exceed 29.2%. These requirements are more stringent at the time of the "mini-medical" examination conducted immediately prior to appointment. All candidates must be able to hold a gun at arm's length for one minute and pull the trigger a total of 16 times. Another component of the agility test -- a 1.5 mile run -- is administered later in the process.

²⁹ APD screened a total of 8,220 candidates for the April 1997 class. 54.49% of these candidates failed the agility test. Of those candidates who passed the agility test (45.51%), 6.20% failed the medical exam. A discussion of the character investigation begins at p. 34.

review.³⁰

After the physical, medical and psychological examinations and a background investigation are conducted, candidates are placed into one of three categories: approved, not qualified, or “considered but not selected.” Those who are deemed “qualified” (approved) are appointed to the Department, are sworn in, and begin their training at the Police Academy.³¹ Candidates who are deemed “not qualified”³² are those who did not meet the Department’s standards in either the physical, medical, psychological, or character area.³³ The third class, “considered but not elected,” represents those candidates who have been reviewed by the Department and whom, despite their being qualified in a general sense, the Department has exercised the discretion it has to reject under the one-in-three rule.³⁴ In sum, whether through

³⁰ Of those candidates considered for the April 1997 class who passed the agility test, medical examination, and character investigation, 20.66% failed the psychological review. Notably, APD and Psychological Services frequently communicate with each other concerning specific aspects of a candidate’s application, including admissions of drug use. This study by the Commission did not focus on the psychological review component of the hiring process.

³¹ Of the candidates for the April 1997 class who passed the agility and medical examinations, 44.54% failed the character investigation. In total, out of 8,220 candidates screened for the April 1997 class, the Department qualified about 1,544 applicants for hire, or approximately 18.8% of candidates who passed the Civil Service Examination for police officers.

³² Candidates who are deemed “not qualified” can, under New York Civil Service Law (“N.Y. Civ. Serv. Law”), appeal the Department’s decision. A small percentage of “not qualified” candidates are successful in their appeal. Candidates who are successful are placed on a “special eligible list” and must be considered first when a new class is selected from the certified list. Although these candidates must be considered first, they may still be eliminated through application of the “one-in-three rule” (see footnote 34 below) or may be deemed “not qualified” in one of the qualification areas other than that which led to their original disqualification.

³³ Pursuant to the Department’s character review, candidates may be rejected based on internal standards for disqualification. See pp. 18-21 for further discussion.

³⁴ The so-called “one-in-three” rule was promulgated to provide New York City agencies with the ability to select candidates best suited to an individual agency’s needs. The rule essentially gives the Department the discretion to reject candidates who otherwise meet the general qualifications of the position (physical, medical, psychological and character). Under N.Y. Civ. Serv. Law Sec. 61, an agency utilizing the “one-in-three” rule must 1) select at least one of every three qualified candidates; 2) consider each qualified candidate three times before the applicant is rejected; and 3) consider applicants in the order of the certified list received from DCAS. See also,

application of the one-in-three rule, or by finding a candidate not qualified on character or other grounds, the Department has the discretion to eliminate an undesirable candidate.³⁵ No candidate, of course, may be rejected for any legally recognized discriminatory reason.

B. Hiring Criteria

The Department has adopted certain hiring criteria involving minimum requirements. Additionally, the Department has developed standards for disqualifying candidates who have engaged in certain prior acts which fall below the Department's standard of character and moral fitness.³⁶ Through these criteria, the Department attempts to both "screen out" candidates who are not suitable to become police officers, and to "screen in" applicants who would make the best candidates.

All candidates must meet certain minimum requirements regarding residency, age, citizenship, driving and education.³⁷ All candidates must reside in one of the five boroughs of New York City or any of six surrounding counties: Nassau, Suffolk, Westchester, Rockland, Putnam or Orange.³⁸ Each candidate must possess a high school diploma or Graduate Education Diploma ("GED"). Additionally, each candidate must have completed a minimum of 60 college

NYC Dept. Of Personnel Rules & Regulations, Sec. 4.7.1 ("General Provisions"). As applied, the Department has the discretion to reject two out of every five candidates on the certified list. In contrast to candidates found to be "not qualified" by the Department, candidates rejected under the "one-in-three" rule cannot appeal the Department's decision.

³⁵ As discussed above, "not qualified" candidates may appeal the Department's decision.

³⁶ These so-called "in-house disqualifiers" are discussed at pp. 18-21, below.

³⁷ The legislative basis for the age, residency and citizenship requirements may be found in N.Y.C. Administrative Code, chap. 1, sec. 14-109.

³⁸ See NYPD Patrol Guide 104-1 ("Residence Requirements").

credits or two years of active military service.³⁹ All candidates must be citizens of the United States, possess a valid New York State driver's license, and be at least 22 years of age, and not older than 35 years old, at the time of appointment.⁴⁰

In addition to these minimum requirements, candidates who have been convicted of a felony crime, or who have been dishonorably discharged from any branch of the United States armed services, are automatically disqualified from the position.⁴¹ Because federal law makes it illegal for any person convicted of a crime of domestic violence to possess any firearm or ammunition,⁴² such an individual also will be disqualified since uniformed members of the NYPD are obligated to carry firearms.⁴³

1. Presumptive Disqualification Based on In-House Disqualifiers

In addition to the minimum requirements and automatic disqualifiers, in early 1995, in response to recommendations made by McKinsey, and by the Mollen Commission, the Department established a series of in-house criteria for candidate character standards. These

³⁹ As of the June 25, 1996, examination, the Department increased its academic standards from requiring a high school diploma or GED to its present requirement. In furtherance of the increased emphasis on the educational backgrounds of candidates, the Police Officer examination administered in May 1998 gave notice that all applicants must have achieved a minimum cumulative grade point average of 2.0. Additionally, the Department is currently considering raising the present requirement of two years of college to four years, but is evaluating whether such a change would too severely limit the applicant pool.

⁴⁰ The minimum and maximum age requirements have been in effect since the June 1996 examination.

⁴¹ N.Y. Correc. Law, Sec. 752.

⁴² Title 18 U.S.C. Sec. 922 (g) (9), enacted by Congress on September 30, 1996, applies to all persons, including law enforcement officers, convicted of a qualifying domestic violence misdemeanor at any time prior to or after the passage of the law. The police officers' examination administered in May 1998 gave notice to applicants that a misdemeanor conviction for a domestic violence crime is an additional automatic disqualifier. This change was in response to the 1996 federal law.

⁴³ Department Interim Order 159, "Equipment Firearms," (11/29/95) (suspending Patrol Guide Sec. 105-1), requires that all uniformed members of the NYPD be armed at all times, with limited exceptions, while in New York City.

criteria grew out of discussions by a focus group comprised of the Chief of Patrol, the Managing Attorney of the Department Advocate's Office, the Deputy Inspector of APD, and others. The group determined that given the difficulty of increasing automatic disqualifiers through legislative actions, the Department would apply in-house criteria presumptively disqualifying candidates and raising character standards. These in-house disqualifiers form the core of the Department's second tier of candidate review. Should a candidate possess any of these disqualifiers, he or she will be deemed presumptively unqualified.

The first category of in-house disqualifiers, dismissal from tenured governmental or public employment, is premised upon the view that someone who has been terminated from a governmental position after a period of probation, and has received the due process that such a tenured employee is entitled to prior to termination, is unsuitable to be a police officer.

The second category, which focuses on contacts with the criminal justice system, balances two factors: severity of the crime or violation committed, and proximity of the violation or crime to appointment date. This second category of in-house disqualifiers presumptively rejects those candidates who have more than two misdemeanor convictions where the underlying charge was a felony; those who have had more than one misdemeanor conviction where the underlying charge was a felony and where such a conviction occurred within two to five years of appointment; and any candidate who has a misdemeanor conviction less than two years before appointment where the underlying charge was a felony.⁴⁴

⁴⁴ The Commission is concerned that these standards may be too permissive given that they allow individuals with multiple misdemeanor convictions to become police officers. While it is not the primary function of this report to review these standards, the Commission does recommend that the Department evaluate them to determine whether they should be more stringent. See further discussion at pp. 64-65.

The Commission does note that of the 81 cases in the sample where criminal histories were reviewed, not

In addition to criminal convictions, the second category of "in-house" disqualifiers examines whether the candidate has received any criminal court summonses ("c-summonses").⁴⁵ Here, the Department presumptively rejects those candidates that have received more than five c-summonses; those that have received more than three c-summonses within two to five years of the appointment date; and, those applicants that have received more than two c-summonses within two years of the appointment date.

The third broad category addressed by the Department's in-house disqualifiers involves the applicant's driving record. In this category, candidates who have had more than seven moving violations on separate occasions -- other than related to employment⁴⁶ -- more than five hazardous moving violations,⁴⁷ more than five suspensions on different dates, or more than one license revocation, are presumptively unqualified. Applicants who have received more than four moving violations on separate occasions -- other than related to employment -- more than three hazardous moving violations, more than two suspensions, or any license revocation within two to

one candidate had a criminal conviction.

⁴⁵ A c-summons is a process issued by a local criminal court directing a defendant who has committed a violation to appear before such court at a designated future time in connection with the offense charged. A violation is an offense, other than a traffic infraction, for which a defendant cannot be sentenced to a term of imprisonment exceeding 15 days. Penal Law Sec. 10.00 (3).

Unless the issuing officer is unable to ascertain the defendant's identity, believes the identification to be false, or suspects that the person is being sought by law enforcement officials for the commission of some other offense, a person receiving a c-summons is not formally arrested and fingerprinted. Typical offenses for which c-summonses are issued include disorderly conduct, loitering (other than loitering for prostitution), public drunkenness, trespass, and carrying an open container of alcohol in public.

⁴⁶ The Department makes a distinction in this category between moving violations (e.g., driving with a broken tail light, or with expired registration) accrued during the course of employment and those received outside of employment. This distinction does not apply, however, to hazardous violations. (See footnote 47 at p. 20).

⁴⁷ Examples of hazardous violations include the following: failure to give right of way to another vehicle; following too closely; speeding; reckless driving; improper turn; failure to obey traffic signal; improper passing; failure to yield to pedestrian; and driving while unlicensed.

five years of the date of appointment are presumptively unqualified. Finally, any candidate who has received more than three moving violations on separate occasions -- other than related to employment -- more than two hazardous moving violations, or more than one license suspension, within two years of appointment, is deemed unqualified.⁴⁸

C. **The “In-House” Disqualifier Board**

APD has created an internal “in-house” disqualifier board comprised of the APD captain, his lieutenant, and an additional lieutenant and sergeant. This group reviews the investigative files of all candidates who, based upon “in-house” disqualifiers, do not meet the Department’s hiring criteria. Such candidates are placed “on review.” When a candidate is placed on review, the review board must decide whether to affirm the decision to disapprove; reverse the decision and determine the applicant is approved; or to place the candidate on “hold” status. A candidate is placed on hold status pending the provision of particular background documents or additional information from the candidate. The Board’s decision is based on a balancing of the positive factors in a candidate’s background with those negative aspects that led to the presumptive disqualification. Where positive factors significantly outweigh the negative aspects, the candidate becomes “approved” or remains on hold status until further information is obtained. If there are no positive factors that outweigh the negative ones, the candidate’s application is disapproved. All “review” cases are sent to the Chief of Personnel for final review. The Chief of Personnel may refer an application back to APD for additional information or reconsideration of its initial determination. In the vast majority of cases, the Chief of Personnel’s determination is

⁴⁸ While analysis of these standards was not the focus of the Commission’s study, the Commission has serious questions as to whether they are sufficiently rigorous in connection with dangerous driving and license suspensions.

consistent with APD's.

D. Case Review Sheet ("CRS")

After the background investigation has been completed, the file is reviewed by supervisors at APD, including a lieutenant, captain and inspector. Although the entire case file is given to the investigator's supervisors, the Case Review Sheet ("CRS") is the primary document that supervisors review in determining whether a candidate is approved, not qualified, or whether he should be rejected pursuant to the one-in-three rule.

The CRS is divided into nine sections: residence requirements, education record, employment record, arrest and summons record, driving record, military record, debts-financial status, controlled substance/alcohol use and miscellaneous questions regarding participation in community service and whether the candidate is licensed to possess a handgun. Each section has a series of questions that may be completed with a yes or no answer (such as, "did the candidate meet the residency requirements"), or short-answer fill-ins (such as "total number of employers"). There is also a narrative section on the CRS for the investigator to elaborate on any issue (positively or negatively) in the applicant's background that requires explanation and/or will assist the supervisor in his or her final determination.⁴⁹ All derogatory information about a candidate is supposed to be listed on the CRS. The CRS is prepared by the investigator, and must be endorsed by the squad investigator, unit lieutenant and commanding officer of APD. Based on these endorsements, the candidate is approved, rejected, or placed on review or hold.⁵⁰

⁴⁹ Applicant Processing Division's Guide (hereinafter referred to as "APD Manual") at p. 203.

⁵⁰ As discussed above, one reason for placing a candidate "on hold" is that the candidate needs to provide additional information or an explanation for some aspect of his or her background. An explanation is made in a "Memo 17B" prepared by the candidate. Examples where a Memo 17B are required include an admission by the

If subsequent to the internal review, new information is obtained by the investigator that would affect the evaluation of the candidate, the investigator is required to submit a “supplemental” CRS and the review process is repeated. As described by the Department, the CRS “sums up the most pertinent data in a case for initial supervisory review and preliminary determination of suitability for appointment.”⁵¹

The CRS of each candidate that is approved, or rejected, is submitted to the Chief of Personnel for final review, with the name of the candidate and any other identifying information redacted. In addition to the Chief of Personnel, an inspector and captain assigned to his office also participate in the final review of an applicant’s CRS. In less than 2% of those cases reviewed does the Chief of Personnel’s office disagree with the conclusions of the APD supervisors.

The Chief of Personnel and all other investigative supervisors rely heavily on the CRS and the answers and explanations included in that document by the investigator. In effect, the CRS is, in most cases, the single document upon which supervisors rely in determining whether to hire a candidate. Therefore the accuracy of the CRS is of critical importance.⁵²

applicant of prior drug use, or the circumstances surrounding a motor vehicle accident in which the candidate was the driver. In such cases, the investigator is instructed to have the candidate complete a Memo 17B in the candidate’s own words without guidance from the investigator as to what to say. APD Manual at p. 178. The Memo 17B is therefore a critical document in the investigative file because it requires the candidate to fully disclose all pertinent information regarding the incident or behavior in question.

⁵¹ APD Manual at p. 203.

⁵² While the Department maintains that at the time an investigation is closed, which could be months or more after hire, all required APD forms will be bound into the employee’s background folder, the Commission noted that in approximately two-thirds of the files the Commission reviewed, documentation supporting CRS entries (e.g., an investigator’s note, a computer printout, or document) was not present. Such documentation is important should the background investigation be taken over by another investigator, or supervisors desire to review the underlying materials.

E. APD's Investigative Standards as Set Forth in Its Investigation Manual

The APD Manual sets forth specific investigative steps to be followed in conducting a background investigation of a candidate for the NYPD. The Manual provides that “[j]ust as patrol offers a wide variety of experiences which will be handled according to established procedures, so will these investigations cover a wide spectrum, but be performed according to the procedures established in this manual.”⁵³ The APD Manual divides the background investigation process into thirteen areas: personal data, residence record, family record, education record, employment record, arrest and summons record, driving history, license and firearm record (including non-driving licenses), military service record, Selective Service record, debts-financial status, controlled substance/alcohol use, and miscellaneous areas (including verification of auxiliary police officer and volunteer firefighter service).

While this study encompassed all the above areas, the Commission focused on five core areas of the background investigation: the applicant’s residential information, including references and statements by neighbors of the applicant; academic history, including disciplinary information; employment history; criminal record; and driving history. There were two primary reasons the Commission focused on these areas. First, these are areas related to the Department’s “in-house” disqualifiers discussed above. And second, an applicant’s reputation among neighbors, employment and school history can provide the most significant information about the candidate’s character and honesty that is important to assessing a candidate’s suitability for being a police officer.

⁵³ APD Manual at p. iii.

The investigative standards relating to these five core areas are explained in APD's investigative Manual. The APD Manual sets forth specific documents that must be obtained and investigative steps and follow-up that must be performed.⁵⁴

F. Decertification and Termination While on Probationary Status

After a candidate is hired, should it be found that the officer made materially false statements or omissions in his or her application to the Department (e.g., the concealment of a criminal conviction), the Department can move to "decertify" the police officer. Decertification results in the termination of the officer and is implemented by the Department notifying DCAS that the Department has learned information that disqualifies the individual from being a police officer. There is no statute of limitations concerning decertification of members of the service who have made materially false statements or omissions in their applications.

The decertification process is important for several reasons. First, it provides a "safety net" for the Department in the event significant information about a candidate is not received before the appointment date. Second, it provides an expeditious way in which the Department can terminate recently hired individuals. Indeed, although the final decision as to whether a police officer is decertified rests with DCAS, and the decision cannot be overturned by the Department, in virtually all cases DCAS concurs with the Department's decision, and the member is summarily dismissed.

The Department advised the Commission that if during a newly hired officer's

⁵⁴ A detailed discussion of these five areas is found below at pp. 35-57.

probationary period,⁵⁵ the Department learns of information affecting the candidate's character or fitness to be a police officer (which the candidate was not specifically asked to disclose), and the Department determines that it would not have hired the candidate had it known such information beforehand, the Department may terminate the officer. While the Department is confident in its ability to terminate a probationary officer for pre-employment conduct about which disclosure was not specifically requested, the Commission is unaware of any such cases and its legal authority to do so is not settled.⁵⁶

IV. METHODOLOGY OF THE COMMISSION'S STUDY

The Commission's study involved both the review of individual background investigative files, and a review of the hiring practices of police departments in other major cities. The Commission consulted with the police departments of Dallas ("Dallas PD"); Miami ("Miami PD"); Boston ("Boston PD"); Los Angeles ("LAPD"); and Chicago ("Chicago PD"); as well as the NYS Police and the Nassau and Suffolk County Police Departments.

⁵⁵ Every police officer is subject to a two-year probationary period commencing on the date of the officer's appointment. During such period, the Department may summarily terminate an officer for any reason, as long as the termination is rationally based, carried out in good faith, and not based on a constitutionally impermissible reason.

⁵⁶ The Commission reviewed all disciplinary cases brought by the Department against probationary police officers between the period July 1, 1995 through October 1, 1997. This review revealed only one case which arguably bears on these circumstances. It involved an officer who did not disclose a debilitating physical condition in response to specific questions posed by the Department before and after he was hired. The officer was only charged for the misrepresentations he made after he was hired. Rather than being terminated, the officer resigned. The Commission conducted this review in furtherance of a separate study, "The New York City Police Department's Disciplinary System: How the Department Disciplines Probationary Police Officers Who Engage in Misconduct", September 1998. The Commission's review included all cases where discipline may have been associated with the hiring process.

A. The April 1997 Class

The Commission examined a sample of the background investigations of those candidates who were considered for the class hired in April 1997.⁵⁷ The class consisted of approximately 1,250 individuals and was based on Civil Service Examination number 5177, which was administered on June 25, 1996.⁵⁸

In order to assess the quality of the background investigations conducted by the NYPD, the Commission reviewed complete background investigations of 95 candidates⁵⁹ who were hired for the April 1997 class, as well as twenty candidates who were deemed “not qualified” for that class.⁶⁰

B. Evaluative Instrument

Commission staff developed an instrument to evaluate the quality and thoroughness of the background investigations. To a great extent, the instrument measured whether the investigation was carried out according to APD guidelines as set forth in the APD Manual. The

⁵⁷ The April 1997 class was appointed on or about April 15, 1997.

⁵⁸ As reported by the Department, approximately 68% of the April 1997 class were residents of New York City. The average age was 25.6 years old. Racially, approximately 29% of the April 1997 class were members of minority groups, while the remainder were white. Slightly more than 10% of the class were women.

⁵⁹ The initial sample was 130. This number represented approximately 10% of the April 1997 class. After reviewing approximately 50 files, Commission staff were able to discern clear and consistent trends concerning the quality and thoroughness of the background investigations. These trends showed, for example, that residential, educational and employment background checks were not being completed according to APD investigative standards. The sample size was then reduced to 95 investigative files and, as discussed below, the trends revealed in the initial review persisted.

⁶⁰ The Commission had several objectives in reviewing a sample of files of candidates who were not qualified for the April 1997 class. The Commission sought to determine, first, how APD applied its hiring criteria, including its in-house disqualifiers, to this group, and second, whether the background investigations of these candidates were qualitatively different from those of hired candidates, and if so, how. For a discussion of the Commission’s review of these “not qualified” candidates, see p. 58.

instrument was divided into two main areas: Investigative Analysis and Document Compliance.

The first area of examination by the Commission involved the review of the investigation itself to determine if the initial background investigation and any investigative follow-up met the standards set forth in the APD Manual. As discussed in detail below, the manual establishes specific procedures to be followed at various stages of the investigation and under what circumstances follow-up investigative steps are required.

The Investigative Analysis section was divided into 16 issue areas: residential reference checks; proof of residency; completion of the minimum college credits; academic disciplinary actions; employment record; periods of unemployment; prior civil service/government employment; prior civil service applications; arrests and summonses; family and/or associate arrest and summons history; driving; non-driving license(s); firearms; military record; drugs and/or alcohol use; and voluntary service. In each of these areas, the Commission staff wrote narratives describing the investigative action taken and what additional steps, if any, were necessary to be in accordance with APD requirements. Additionally, the instrument provided an overview of the investigation conducted. This overview considered whether: the candidate's records and credentials were investigated according to APD requirements; derogatory information learned during the investigation was properly reflected on the CRS; the CRS was endorsed, as required, by APD supervisors; and whether it was a post-February 1997 investigation.⁶¹ Although Commission staff conducted a thorough analysis of the 16 areas

⁶¹ In late February, 1997, the Department learned that it had the funding to hire an additional 600 officers for the April 1997 class. As a result, on or about March 7, 1997, APD opened 500 new investigations. (The investigation of approximately 100 "back-up" candidates had already been initiated.) With the addition of 600 hires, APD had to complete, and in most instances, commence and complete, the background investigations of these additional 600 applicants within a period of a little over one month.

comprising the background investigation, for the reasons discussed above, five core areas were selected for in-depth review in this report.

The second area examined by the Commission was the Department's compliance with APD's requirements that specific documents be obtained before completing an investigation. According to the APD Manual, the Department requires more than 50 forms and documents to be included in every applicant's folder. This information runs the gamut from birth certificates and college transcripts to fingerprint responses. Understanding that certain pieces of information were more critical than others, and recognizing the massive effort of attempting to track myriad documents for each of the 95 files, the Commission identified 19 key documents required by APD to be completed and evaluated during the applicant review process.

These 19 documents include: Personal History Questionnaire (PHQ, or APD-5);⁶² Pedigree Sheet (APD-6);⁶³ Age Computation Sheet (APD-12);⁶⁴ Residence Verification Form (APD-13);⁶⁵ Personal Reference Reports (APD-14); Birth Certificate/Naturalization Certificate; College Transcripts; School Inquiry Form (APD-16); Campus Security and Local Law Enforcement Inquiry (APD-45); Employment Verification Form (APD-19); NYC Criminal

Given the concern that the quality of these short-notice investigations might be lower, the Commission specifically identified those investigations that were commenced after February 1997. The Commission determined that, overall, there was little difference in quality between the investigations conducted pre- and post-February 1997, see p. 58.

⁶² For a discussion of the PHQ, see pp. 69-73.

⁶³ The Pedigree Sheet requests from the candidate such information as date of birth, race, height, weight, scars, marks and tattoos (if applicable). A photograph of the candidate is attached to this form.

⁶⁴ The Age Computation Sheet shows whether the candidate meets the Department's age requirements.

⁶⁵ The Residence Verification Form is used as a cover sheet for each residence check conducted by the investigator. The candidate's address (either past or present), including dates when the candidate resided there and a list of the independent documentation that verifies that the candidate did in fact live there, is noted.

Records Check (APD-29); DCJS Arrest Record; FBI Fingerprint Check; Family Arrest Information; NYS Department of Motor Vehicles Abstract; NYS Driver's License; Firearms Questionnaire (APD-9);⁶⁶ Request for Military Record (APD-34);⁶⁷ and Case Review Sheet. In each section, Commission staff noted whether the key document was present, complete, and consistent with other documents in the file.

C. The Department's Response

A draft of this report was submitted to the Department for its comment. In its response, the Department noted that a candidate's background investigation remains open and continuing until all required APD forms have been completed or received at which time these and all other relevant forms are bound into the candidate's permanent personnel file.⁶⁸ According to the Department, the binding process does not occur until after the candidate has been hired and in most cases not until many months after hire. Indeed, while the Department has assured the Commission that this process will be completed before the end of the probationary period, at the time of this writing, the binding process for the April 1997 class has not yet begun, even though

⁶⁶ The Firearms Questionnaire is a statement by the candidate that he understands that he cannot possess any hand gun upon appointment to the New York City Police Department until he or she graduates from the Police Academy. The form also requires that the candidate supply information regarding the present possession of any firearms (i.e., type and caliber, serial number and licensing authority). Finally, the candidate states that he agrees to surrender all hand guns and all hand gun permits to local police and produce proof of receipt thereof on the date of appointment.

⁶⁷ The Request for Military Record is a release for military medical and service information by the candidate. This form lists the candidate's name, date of birth, branch of service, service serial number, and present military status. The relevant military branch then completes the section which lists each period of active service. The information acquired through the APD-34 and records released by the military are essential to the determination of whether the candidate meets the educational requirement of either 60-plus college credits or two years of active military service, and to determine if the candidate is automatically disqualified from being appointed a police officer pursuant to NYS law because of a dishonorable discharge from the military.

⁶⁸ Information regarding whether a candidate possesses the minimum requirements to become a police officer, as discussed above, is received prior to hire.

these officers have been on the streets for over a year.

In the event additional investigative steps need to be taken prior to binding to ensure the reliable completion of APD forms at the time of binding, the Department advised the Commission such steps would be taken. This includes, for example, repeating investigative steps if the investigator is unable to recall, based on his or her notes, or otherwise, who was contacted or what was said about the candidate in order to reliably and fully complete a personal reference form (APD-14).⁶⁹

It is the Department's position that, since all forms must be in the file at the time of binding, if derogatory information learned at that time reveals the applicant made a material misrepresentation in his application, the Department can decertify the officer; or if the misconduct is serious enough, but did not involve a misrepresentation, the Department maintains it can terminate the officer during his probationary status.⁷⁰ The Department believes, however, that it will discover, before the candidate is hired, prior acts of serious misconduct because such misconduct would have resulted in an arrest and would be disclosed in the criminal history check conducted before hire.

Additionally, the Department informed the Commission that it believes speaking with neighbors who do not know the candidate is acceptable based upon its past experiences in conducting field checks where little information was gleaned from interviews with neighbors

⁶⁹ This problem also sometimes develops because a different person is responsible for the case at the time of binding than at the time the pre-hiring investigative steps were undertaken.

⁷⁰ See discussion above at pp. 25-26.

who knew the applicant.⁷¹ Similarly, despite explicit directions to do so, contained in the APD Manual, the Department does not believe it is valuable to make personal contact with a candidate's prior employers because the Department believes such employers are reluctant to be candid out of fear of retaliatory litigation. Thus, despite the language in the Manual, the Department routinely does not make such personal contacts.

It is therefore, the Department's position, that absent the presence of derogatory information, the written information submitted to the Department provides it with sufficient evidence to evaluate the candidate and personal contact with those who knew the applicant prior to the application process is not essential. The Commission does not agree. Rather, it believes that relying strictly on the written responses of educators and prior employers and accepting the references of neighbors who do not know the candidate, only provides the Department with a limited, two dimensional view of the candidate. In order to get a meaningful sense of a candidate, APD investigators should establish personal contact with at least some of these individuals. Written responses are not sufficient to hire a police officer.

The Department also indicated that background investigative steps taken were not always reflected through the presence of the required formal documents in the file. In order to most fairly and substantively assess the quality of the investigations in the sample, the Commission identified and credited any evidence indicating that an underlying investigative step had been taken relative to a residential check or other area where personal contact was required. The Commission credited these investigative steps even where the corresponding APD form was not

⁷¹ The Department speaks with a candidate's current and past neighbors to obtain specific information about the candidate's character and fitness to be a police officer.

present in the file. To this end, all evidence of such investigative steps were considered and given credit, including evidence in the form of handwritten notes indicating that personal contact had been made with an employer or neighbor. For example, where evidence in the form of notations next to a Coles print-out indicated that a telephone call had been made to a candidate's neighbor,⁷² the Commission treated such a notation as substantively fulfilling the requirement of a completed APD-14.⁷³

The Department maintains, however, that the Commission should have credited the Department for completed residential checks, even in cases where only a conclusory statement was reflected on the CRS (e.g. "residency check conducted - no derogatory information found."). The Department maintains that notwithstanding the absence of any supporting documentation indicating the identity or location of who was contacted and when that contact was made, such a conclusory statement means that the investigative steps were completed. According to the Department, if derogatory information was learned, this information would have been documented either on the CRS or elsewhere in the file. A conclusory statement on the CRS, however, did not indicate whether any of the neighbors contacted had actual knowledge of the candidate or not.

Further, the Department maintains that other investigators' notes likely exist which were not included in the materials provided to the Commission, and that these notes could document

⁷² A Coles directory (published by the Coles Company) is a reverse directory with which one can obtain the names and telephone numbers of surrounding neighbors based upon street address or apartment building. APD investigators use this directory to contact by telephone candidates' current and past neighbors.

⁷³ Where there was no supporting documentation for such investigative steps, however, the Commission did not give such credit.

investigative steps related to making personal contact with neighbors.⁷⁴

The analysis below does factor in the possibility that such undocumented contacts did take place. Any such working notes and/or conclusory statements are not, however, an adequate substitute for a completed APD-14, which documents disclosure of a broad range of information. Moreover, the Commission is concerned that relying on conclusory statements on CRS's, without supporting documentation, undermines the ability of supervisors to fully assess an investigator's work and a candidate's qualifications.

V. DISCUSSION

As discussed above, the Commission analyzed 16 areas in connection with its investigative analysis. Of these 16 areas, five components were chosen as the main focus of the Commission's study: (1) residence; (2) education; (3) employment; (4) arrest and summons; and (5) driving history. These areas were primarily chosen because of their relevance to the Department's "in-house" disqualifiers discussed above,⁷⁵ and because of their importance in evaluating a candidate's fitness and character to become a police officer.

In connection with each of these five core areas, the Commission sought to determine: 1) whether the critical documents associated with each candidate were transmitted to the required third parties; 2) the extent to which these documents were returned and completed; 3) whether the information provided was consistent with information provided from other sources; 4)

⁷⁴ The Department first informed the Commission about such notes in its response to the Commission's draft. The Department maintains that the notes are not readily accessible because many of the investigators who completed the background investigations are no longer assigned to APD.

⁷⁵ See pp. 18-21.

whether the documents contained derogatory information about the candidate; 5) whether APD investigators made personal contact as required; 6) whether appropriate follow-up measures were taken to determine the facts and circumstances regarding the derogatory information and that the information was properly evaluated in the context of the Department's hiring criteria and in-house disqualifiers; and 7) whether the derogatory information was properly recorded in the CRS for supervisory review. The Commission's findings follow.

A. Residential

Verifying a candidate's residential history and contacting his or her neighbors is a critical step in a thorough background investigation. Without verifying the candidate's residential history, the Department is unable to draw basic conclusions about the candidate's personal history. Moreover, by establishing contact with a candidate's neighbors, the investigator is able to determine the candidate's reputation in the community and potentially learn information from this potentially important source that may bear directly and significantly on the candidate's character and fitness.

The Department's investigative standards require the investigator, at a minimum, to verify the candidate's residences for the five-year period preceding the application and to determine his reputation for character and fitness by contacting at least three neighbors at each residence. The APD-14, or "Personal Reference Report," is the primary means by which the investigator develops and documents this information. The form elicits a range of information from each neighbor contacted, including how long the neighbor has known the candidate; whether the neighbor knows any of the candidate's friends; what is the neighbor's view of the candidate's reputation in the community; and whether the neighbor recommends the candidate

for the position of police officer. Because, in general, the candidate does not provide the names of neighbors, the investigator utilizes a Coles printout to obtain the names, addresses, and telephone numbers of individuals who may have lived in the candidate's neighborhood. The APD-14 is then completed by the investigator based on the answers obtained during the course of a telephone interview. If derogatory information is learned from the applicant's neighbors, or if there are reasons to believe that the candidate has not lived at the residence, then the investigator "may perform [with the permission of the squad supervisor] the residence check early in the investigative process and checks may be conducted for places of residence going back more than five years from the application date."⁷⁶ If needed, "an actual visit to a neighborhood is permissible by conferring with a squad supervisor."⁷⁷

In addition to neighbors, the APD Manual advises the investigator to attempt to interview, where applicable, the superintendent of the applicant's apartment building; to contact family and/or friends who lived with the applicant; and to consult with the management office if the candidate resided in a New York City housing development.⁷⁸

In each case, follow-up investigation is required regarding any derogatory information discovered.⁷⁹ According to the APD Manual, these residence checks are "ideally" to be conducted prior to appointment.⁸⁰ Although the APD-14 form requests a variety of information

⁷⁶ APD Manual at p. 56.

⁷⁷ *Id.* at p. 57. While the Commission recognizes that a candidate's neighbors may not be comfortable speaking with a police investigator in person, let alone by telephone, diligence is nevertheless required in this area.

⁷⁸ *Id.* at p. 59.

⁷⁹ *Id.* at p. 56.

⁸⁰ *Id.*

that could only be obtained from a neighbor who actually knows the candidate, the APD Manual does not require the background investigator to consult with neighbors who know the candidate. Indeed, the Department's policy is to consider the residential check completed even if none of those contacted ever heard of the candidate. The Department's position is premised on its view that neighbors who know a candidate are, in any event, unlikely to provide meaningful information.

The APD Manual also stresses the need to speak with the candidate's spouse prior to the date of appointment. Speaking with a spouse is to be done at the time of the residence check. The APD Manual notes that "if a spouse is interviewed at the time of the residence checks, have him or her indicate on the Personal Reference Report (APD-14) how he or she feels about the candidate becoming a Police Officer."⁸¹

In examining the Department's adherence to the APD guidelines related to the residence check and recognizing that the Department does not require the actual completion of each APD-14 until the file is bound, the Commission focused on the following steps: 1) Prior to hire, to what extent did the investigator complete three APD-14's for each of the candidate's residences going back five years from the application date; 2) Was there follow-up by the investigator where derogatory information was learned; and 3) If the candidate was married, was any contact made with the candidate's spouse.

In 75 investigations of the 95 candidates in the Commission's sample, three APD-14's were not completed prior to hire for each residence of the candidate going back five years from

⁸¹ Id.

the date of application. Indeed, not a single APD-14 was completed, prior to hire, for 32 of the cases in the Commission's sample. Also, in only 36 of the cases did APD complete all three APD-14's for the applicant's current residence. While the Department maintains that more contacts were, in fact, made and at the time of binding, all APD-14's will be completed, it seems a far better practice for these documents to be completed contemporaneously when the facts are fresh in the investigator's mind.⁸²

As discussed above, the Department maintains that a conclusory statement on the CRS noting that a residential check was completed is a reliable indication that at least three neighbors at each address the candidate resided at for the last five years was contacted. The Commission identified 55 files in the sample in which CRS's contained such conclusory statements regarding residential checks. If these 55 investigations are added to the 31 investigations in which the Department either completed three APD-14's for each residence going back five years (a total of 20 investigations) or investigator notes indicated that contact had been made with the neighbor (a total of 11 investigations), a total of 86 out of 95 cases showed fully completed residential checks. In nine investigations, however, the Commission found no evidence of either a conclusory statement in the CRS, any investigator notations, or any completed APD-14's.

Of the 19 candidates in the sample who were married, the investigator did not contact spouses in 16 instances. Additionally, in only one case in the Commission's sample did an investigator discover derogatory information about a candidate through the residence investigation. This case involved a neighbor who had been named as a defendant in a lawsuit

⁸² The Department agrees with the Commission's recommendation and is taking steps to implement it.

brought by the candidate over the use of a common driveway. The candidate disclosed the lawsuit in his APD-5, and the investigator followed-up by obtaining documentation corroborating the candidate's disclosure.

Significantly, the Commission also determined that of the 219 APD-14's completed (involving the investigation of all 95 candidates), 78 of these APD-14's indicated that the neighbor did not recognize the name of the applicant or otherwise know who he or she was.⁸³ This finding is important since such a response, which in the Commission's view, does not provide any probative information about the candidate, counts toward the three-reference requirement per residence.⁸⁴ Indeed, in 12 of the 63 investigations in which at least one APD-14 was completed, APD based their entire inquiry of the candidate's neighbors on references who did not know the candidate. While it is impossible for the Commission to evaluate how many of the 55 cases, in which conclusory statements were contained on the CRS, were based on individuals who knew the candidate, the Commission believes in light of the foregoing data, it is likely that a significant percentage of these cases involved only neighbors who had no knowledge of the candidate.

⁸³ An additional 29 APD-14's completed were based upon information from a relative or friend of the candidate.

⁸⁴ For a fuller discussion of this issue, see pp. 60-61.

B. Educational

An investigation consistent with APD procedures requires that the investigator obtain from each school the candidate attended, since ninth grade, a completed “School Inquiry Form” known as the APD-16.⁸⁵ This document serves to: verify the candidate’s dates of attendance and degree, diploma, or certificate received. The form also documents any truancy, lateness, or disciplinary record; and asks the school to rate the candidate’s dependability, cooperation with and courtesy to others.⁸⁶ The information on the APD-16 is used to confirm that the candidate meets the Department’s educational requirements as well as to offer insight into the candidate’s behavior within a school setting.

When the APD-16 is returned from the school, the investigator must check the form for missing or unanswered questions, discrepancies and derogatory information. The APD Manual provides that “[i]f any caption is left blank by the school official who completed the form, call that individual and ask for the missing information.”⁸⁷ The APD Manual also states that upon review of the forms, the information provided by the school should be compared with the answers supplied by the candidate on the PHQ and checked to see whether there are any undisclosed schools or other information not disclosed by the candidate.⁸⁸

The APD Manual also requires the investigator to: obtain an official transcript from each

⁸⁵ APD Manual at p. 66.

⁸⁶ This latter information (which the Department obviously considers to be relevant), to the extent not available prior to hire, is the kind of information which, as a practical matter is not used to “un-hire” an officer but could have caused the Department to exercise its discretion to reject the candidate before hire.

⁸⁷ *Id.* at p. 67.

⁸⁸ *Id.*

school the candidate attended, check the transcript for disciplinary actions, and compare the transcript with information provided elsewhere in the file by the candidate. The investigator is required to look for different addresses, social security numbers and other schools attended. If the transcript indicates the candidate earned extremely poor grades, was excessively late or absent, was the subject of any disciplinary action while attending any school, or if there was any other type of derogatory information disclosed by any school, the candidate must complete a Memo 17B⁸⁹ explaining the circumstances and details of the incident.⁹⁰

Most importantly, the APD Manual states that when there are discrepancies between what is on the form and other information available to APD, or where derogatory information is disclosed, the investigator “must make personal contact to confirm the information as well as to obtain as much additional information as possible.”⁹¹

If the candidate resided on-campus outside of New York City, APD investigators are also required to contact campus security to determine if the candidate engaged in any misconduct bearing on his or her ability to serve as a police officer.⁹²

The Commission determined that there was evidence in the file that APD-16's were sent

⁸⁹ If the candidate materially misrepresents the facts, or omits material information, regarding the incident, this may be grounds for decertification. See discussion of the decertification process at pp. 25-26, above.

⁹⁰ APD Manual at p. 67.

⁹¹ Id. at p. 68.

⁹² Id. The APD-45 is the document sent to the campus security office. It provides the candidate's name, address, date of birth and social security number and requests that the agency indicate whether the candidate has a disciplinary or criminal record. The APD-45 is also sent to law enforcement agencies and local police forces located in states or locales where the candidate worked, lived, received a summons, or attended school. See p. 53. Most of the candidates in the Commission's sample attended school in NYC. The Commission determined that 28 candidates in the sample lived on-campus in schools outside of the city.

to each school going back to 9th grade attended by the candidate in 81 out of the 95 cases in the sample.⁹³ In 64 of these 81 cases, each of the requisite schools returned an APD-16 by the time of hire.⁹⁴ In 71 cases, the Commission identified missing or inconsistent information. Much of this missing information related to the school's evaluation of the candidate's character. Of these 71 cases, there was no evidence that APD contacted the relevant institution. The Department maintains that contact with these institutions would not have been productive because of the reluctance of school personnel to be candid about a candidate's character for fear of retaliatory litigation. This position, however, is inconsistent with the standard contained in the APD Manual,⁹⁵ and assumes that plainly important information will not be forthcoming without making the attempt to retrieve it.

Focussing on APD's contacts with candidates' high schools, the Commission observed that APD-16's were sent to the candidate's high school in 90 of the cases in the sample, and that in 81 of these 90 cases the APD-16 (or a letter from the school) was returned. Of these 81 cases,

⁹³ The Commission based this conclusion on the absence of any evidence indicating that an APD-16 was transmitted, including the absence of a photocopy of an APD-16 addressed to the institution, but not completed by the institution. (Such photocopies were noted by the Commission in many cases.) The Department advised the Commission that additional requests may have been transmitted despite the absence of such documentation, because each investigator maintained their file differently and there was no standardized practice for tracking the transmission of such documents. The Commission notes that investigators were to maintain an APD-1, known as the Record of Correspondence. According to the APD Manual, "the investigator must make a notation on this form indicating the date on which each form was sent out." APD Manual at p. 199. All APD-1's were reviewed in connection with the Commission's analysis.

⁹⁴ In six of these investigations, APD did not receive an APD-16 but rather a letter from the school. The Commission included these letters as part of the total of 64.

⁹⁵ The APD Manual sets forth, "If any caption was left blank by the school official who completed the form, call that individual and ask for the missing information. If the school official refuses to provide that information, prepare an Investigator's Note which gives the date and time of personal contact, the name and title of the person contacted, and all information obtained." APD Manual at p. 67. The Commission's analysis included the review of all investigative notes which may have been written.

52 contained missing or inconsistent information; in none of those cases was there evidence of follow-up by APD as required by the Manual.

The Commission further observed that in the investigation of the 83 candidates in the sample who attended college,⁹⁶ APD-16's were sent to all colleges attended for one academic year or more in 72 of the cases. In 70 of these cases, all APD-16's (or a letter from the school) were returned. Of these 70 cases, 64 contained missing or inconsistent information; in none of those cases was there evidence of follow-up by APD.

The Commission is also concerned with an apparent lack of communication between APD and the campus security police of those institutions where the candidate resided on the college campus outside of NYC. Of the 28 candidates in the Commission's sample who had resided on-campus outside of NYC, only 15 investigative files contained any evidence that an attempt was made to contact campus security and in only seven of those cases was a response obtained.⁹⁷ In these seven cases, only one response contained missing or inconsistent information about the candidate. As discussed above, the Department maintains that all responses from campus security will be received once the case is closed, even though this may occur a considerable time after hire. The Department also points out, that had the candidate engaged in serious misconduct which resulted in the candidate's arrest, the Department would have learned of this fact from its criminal history check, which is completed before hire, thus reducing the urgency of receiving a response from campus security offices prior to hire.

⁹⁶ The 12 candidates who had two or more years of military service are excluded from this group given that they were not required to have 60 or more college credits.

⁹⁷ Here too, the Commission's conclusion was based on the absence of any evidence that such forms were transmitted. See footnote 93 at p. 42.

Significant disciplinary actions against the student also likely will be disclosed in the APD-16. In fact, however, not all serious misconduct results in an arrest or a “printable” offense, and thus inappropriate conduct can go undetected by the Department until after hire. And, as discussed above, while the Department might be able to terminate an officer based on later acquired information, its ability to do so has not been clearly established.

A more serious failure involved the identification by the Commission also of 15 candidates out of the Commission’s sample where APD received derogatory information from the candidate’s academic institution. In only four of these cases did the candidate complete a Memo 17B regarding the derogatory information. And, in none of these 15 cases did the investigator make personal contact with the school.⁹⁸

Finally, although APD did not receive an official transcript from every college attended by the candidate in 7 of the 83 cases where the candidate attended college,⁹⁹ APD’s investigation confirmed that all of the 83 candidates who were required to complete 60 or more college credits did complete the requisite number of credits.

C. Prior Employment

Evaluation of a candidate’s prior employment history is another critical component in determining the candidate’s fitness to become a police officer. The fact that a candidate has worked steadily and competently is evidence of important character traits for a good officer,

⁹⁸ This derogatory information typically involved the candidate having been placed on academic probation and was disclosed on the candidate’s transcripts rather than in APD-16’s. The Department indicated, that such derogatory information, absent other negative factors in the candidate’s background, would not constitute a basis to reject the candidate. Consequently, in the Department’s view, personal contact with the school in such a case would not have been warranted.

⁹⁹ In these seven cases, other reliable evidence was contained in the file documenting the receipt of the requisite number of credits.

including honesty, dependability and a demonstrated sense of responsibility. Conversely, evidence of poor performance may be a meaningful indicator of someone who is not fit to become a member of the Department.

To comply with APD standards in conducting this aspect of the background investigation, the APD investigator must send to each of the candidate's prior employers for the five years preceding the application, an Employment Verification Form known as the APD-19. This form seeks information to verify the dates of the candidate's period of employment, the conditions of separation (e.g., resigned voluntarily, requested to resign, discharged, etc.), information relating to the candidate's honesty, sobriety, and dependability, and whether the candidate was ever disciplined, whether the candidate is eligible to be rehired, and whether the employer would prefer a personal interview to discuss the candidate. The APD-19 contains a waiver of liability executed by the candidate.¹⁰⁰ Once the employer returns the document, it is incumbent upon the investigator to review it for discrepancies and or omissions.

The APD Manual further provides,

If there are any discrepancies or omissions [on the APD-19], the investigator should immediately contact the employer to either fill in the gaps or check the discrepancies . . . it's important to send out these forms as quickly as possible, and doubly important to make personal contacts and follow-up inquiries as soon as these forms are returned by the employers. If any derogatory information is disclosed, immediately contact the employer concerned. (emphasis in original)¹⁰¹

Additionally, if negative information is received, the investigator must obtain a Memo 17B from

¹⁰⁰ For further discussion of this issue, see pp. 74-76.

¹⁰¹ APD Manual at p. 77.

the candidate explaining the derogatory information disclosed. Finally, if derogatory information is disclosed, the investigator must send an APD-19 to all of the candidate's employers back to high school, regardless of the number of intervening years.¹⁰²

The candidate may elect not to have his or her present employer contacted if he or she fears that such an inquiry may jeopardize a promotion or continued employment. In those cases, the investigator is required to have the candidate complete a "Request by Candidate to Delay Contact of Current Employer." The candidate must still, however, present proof of current employment by providing a pay stub or federal "W-2" form. Upon appointment, the investigator transmits an APD-19 to the former employer. Candidates who are currently employed by a governmental agency, however, cannot request a delay in contact.¹⁰³

If the candidate was employed by a governmental agency, additional steps are required to be taken, including personal consultation with the candidate's direct supervisor; contact with the agency Inspector General if the candidate worked for a NYC agency, to determine the candidate's disciplinary record, if any; and if the candidate was ever employed by the Department, personal contact with the candidate's commanding officer and a review of the candidate's Central Personnel Index.¹⁰⁴

Finally, the APD Manual directs that even if nothing derogatory is learned, personal

¹⁰² *Id.* at p. 76.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at p. 92. The CPI is a summary of all personnel-related events in a NYPD employee's history. It includes summaries, if any, of allegations of misconduct and their dispositions.

contact must be made with each employer for the past five years.¹⁰⁵ Accordingly, the Commission utilized this standard in its evaluation of the files.

In response to the Commission's draft, however, the Department advised the Commission that it did not utilize this standard in connection with the April 1997 hire. First, as a general matter, the Department does not make personal contact with employers mandatory and the Department stated that the APD Manual provision requiring such contact with each employer was erroneous. The Department believes that sufficient information is gleaned from the completed APD-19's and requiring investigators to expend time in making personal contact, absent specific derogatory information, is not worthwhile because of employers' reticence to provide candid information to background investigators out of fear of subsequent liability.¹⁰⁶ Thus, as discussed below, such personnel contact was rarely made, and, given the Department's position, in those cases where it did occur, it is often unclear what the rationale was for doing so.

Second, for the April 1997 hire, APD evaluated, on a case by case basis, the number of written responses it received prior to hire and determined whether this was sufficient. This number was subjectively determined according to the circumstances of each case. If the Department determined a sufficient number of responses were received, then absent derogatory information, no personal contact was required. If, however, APD determined that an insufficient number of written responses were received, then investigators were directed to make phone

¹⁰⁵ *Id.* at p. 84.

¹⁰⁶ For further discussion of this issue, *see* pp. 74-76.

contact with any employer within the last two years.¹⁰⁷ Because the standard APD applied with respect to this aspect of the background investigation, personal contact with previous employers, was so subjective, the Commission was unable to determine whether there was compliance with that standard.

The Commission's findings in this area do, however, document what information the Department had at the time of hire. In 28 of the investigations in the Commission's sample, there is no evidence that the investigator transmitted the employment verification form (APD-19) to each of the candidate's current or prior employers for the 5 year period preceding the date of application.¹⁰⁸ Of the 67 investigations where an APD-19 was transmitted to each employer, the form was returned from each of the candidate's employers in only 35 of the cases. Of those 35 investigations where all APD-19's were returned, 22 contained missing information or inconsistencies and in only five of these investigations was there evidence that APD conducted any follow-up as required by the Manual.

Overall, in 13 of the 95 cases in the sample, APD learned derogatory information about a candidate's employment history from either the APD-19 or based on the candidate's own disclosures reflected in the APD-5. Of these 13, there was evidence that in only four cases APD followed-up by contacting the employers. In 11 of the 13 cases where derogatory information was learned, APD transmitted an APD-19 to all employers going back to high school, as required

¹⁰⁷ The Department also maintains that by the time of binding, APD-19's will be obtained from all the required employers and that all of the defects described below will be cured.

¹⁰⁸ Here too, the Commission's conclusion was based on the absence of any evidence that such forms were transmitted. See footnote 93 at p. 42.

by the APD Manual.¹⁰⁹

Out of a total of 406 employers, based on the aggregate number of employers the 95 candidates had within the five year period preceding the date of application (or where contact with employers going back to high school was required because of derogatory information), APD investigators made personal contact with 40 of these employers.

Pursuant to its study, the Commission also evaluated APD's contacts with each candidate's two most recent employers. In 86 investigations, APD-19's were sent to the candidate's current employer (or the preceding one where the candidate requested that his or her current employer not be contacted). In 65 of these 86 cases, the APD-19 was returned, and in 17 cases personal contact was made with the employer. Of the 65 cases where an APD-19 was returned, 21 contained missing or inconsistent information. In only five of these cases was there evidence that APD took follow-up measures. In only one case (of the 65 where it was returned) did APD learn derogatory information about a candidate from a current employer. APD conducted appropriate follow-up in that case.

The Commission further noted that in 82 of the 94 cases where the candidate had more than one employer in a five year period, an APD-19 was sent to the employer preceding the current one (or the employer before that one, where the candidate requested that her current

¹⁰⁹ Even where APD did take some follow-up measures in response to the receipt of derogatory information, such measures were not always sufficiently thorough. One candidate disclosed in his application that a former employer had fired him because he had failed to show up for work. Although a 17B Memo was completed by the candidate, personal contact was not made with the employer. In another case, the employer indicated in the APD-19 that the candidate was suspected of being dishonest, was not amenable to orders, and did not get along with his co-workers. Although the investigator contacted the employer, there is nothing in the file indicating a discussion about the employer's specific concern that the candidate was dishonest.

employer not be contacted). The APD-19 was returned in 68 of these cases.¹¹⁰ In 33 of the 68 cases where an APD-19 was returned, the form contained missing or inconsistent information. In only two of these cases was there evidence of APD follow-up. In this group of 94 candidates, APD made personal contact with the employer in ten cases.

Eight of the applicants in the Commission's sample had prior civil service employment with a (non-NYPD) NYC agency. In only two of these eight investigations was there evidence that APD contacted the relevant Inspector General's Office. Six of the candidates in the sample had prior employment with the NYPD. Of these, while APD-19's were received from each of the candidate's prior commands, APD personally contacted the candidate's commanding officer in only two cases, and obtained the candidate's CPI in four cases.

D. Arrest/Summons

The need to determine a candidate's contacts with the criminal justice system and to develop as thorough an understanding of these contacts as possible cannot be minimized. The existence of a criminal history, particularly if close to the date of hire, may be the single most critical indicator of a candidate's propensity towards dishonesty or violence. The absence of such a history, also is the justification for the Department's belief that personal contacts with people who know the candidate generally are not necessary. For this reason, and because the existence of a criminal conviction or receipt of a certain number of c-summonses may result in the officer's disqualification according to the Department's own standards,¹¹¹ it is imperative that the Department be thorough in this aspect of the background investigation.

¹¹⁰ The Department assured the Commission that all APD-19's would be obtained prior to case closing.

¹¹¹ See discussion of in-house disqualifiers on pp. 18-21.

Pursuant to APD standards, the fingerprints of the candidate are submitted to the NYS Department of Criminal Justice Services (“DCJS”) in Albany. The Department submits the applicant’s fingerprints on special fingerprint cards indicating that the individual has applied for the position of police officer. Under CPL Sec. 160.50 (1) (d) (v), law enforcement agencies are allowed access to sealed criminal cases (other than juvenile delinquent matters), and DCJS will therefore provide a record of arrests and prosecutions to the Department that includes sealed criminal cases.¹¹² From DCJS the Department will learn whether the candidate has been arrested or prosecuted for any crimes,¹¹³ the disposition, and whether the individual has been fingerprinted in connection with an employment application to another law enforcement agency or for a license to possess a firearm. Additionally, a set of fingerprints is submitted to the Federal Bureau of Investigation (“FBI”), which conducts a national search of the applicant’s arrest history. In addition to learning whether the applicant was arrested in other states, the FBI search will reveal if the candidate has a federal criminal record of arrest or prosecution. The investigator is advised to always compare the information returned by DCJS and the FBI with the information supplied by the candidate. If the candidate has a criminal record, the candidate must prepare a Memo 17B explaining the circumstances of the crime.

In addition to the DCJS and FBI reports, APD investigators also conduct an “NLETS”¹¹⁴ check on each applicant. This inquiry, based upon the candidate’s name, date of birth, and social

¹¹² The Department may learn about juvenile delinquent records, as well as obtain sealed criminal and youthful offender records, through candidate disclosure and/or use of a release by the candidate. See footnote 25 at p. 13.

¹¹³ While DCJS printouts predominantly contain information relating to NYS arrests and prosecutions, the printout may also contain information relating to an out-of-state and federal criminal history.

¹¹⁴ National Law Enforcement Tracking System.

security number, shows arrests and prosecutions of the individual, as well as outstanding warrants, within any state that participates in the tracking system. Because the NLETS search can be conducted without submission and analysis of the candidate's fingerprints, it provides a more expeditious method for conducting a criminal records check of an applicant. However, since it is not based upon an analysis of the candidate's fingerprints, it is not considered an adequate substitute for the FBI fingerprint record.

The investigator is also required to conduct a comprehensive NYC criminal records inquiry in order to determine whether a candidate has had any contacts with the NYPD, or is included in various databases maintained by the Department's Intelligence Division. In this area, the investigator's first step is to obtain from the applicant a completed "Applicant Records Check Form" ("APD-29").¹¹⁵ The investigator submits the APD-29 to various Departmental units which maintain specialized information, including the following: whether the candidate was involved in an accident or altercation and received emergency treatment ("aided and accident reports"); whether there are any outstanding warrants for the candidate's arrest; whether the candidate's name and photograph is on file in the Department's Bureau of Criminal Identification; whether the applicant has ever been arrested in New York City; and, whether the Department has information that the candidate or any member of the candidate's family and/or "associates" is involved in criminal behavior that has come to the attention of the Department's

¹¹⁵ On the APD-29, the candidate is required to list all present and former residences including the street address, city, state and zip code. The candidate must also include, the first and last names, address, race, date of birth and relationship to the candidate of immediate family members and "associates." (Although the APD Manual does not define "associates," the term appears to apply to roommates with whom the applicant resides. The Commission questions the use of the term "associate," and recommends that the Department use more specific terms such as "roommate," "cohabitant," "girlfriend," "boyfriend," or "domestic partner.")

Intelligence Section.

Candidates who have received a c-summons also must complete a Memo 17B explaining the circumstances of receiving the summons and its disposition.¹¹⁶ The candidate must also provide a copy of the official record of the final disposition for any c-summons received. This is required of the candidate regardless of where the summons was issued. If the summons was not answered by the candidate in a timely manner, the candidate must complete a Memo 17B explaining the reason for the delay. In addition, candidates are required to submit a copy of the c-summons to the investigator.¹¹⁷

Finally, the scope of inquiry regarding an applicant's criminal history extends outside of NYC and NYS. If the candidate, since age 12, ever resided, worked, attended school, or received a summons outside of NYC, an APD-45, which seeks to determine whether or not the subject has a criminal record, must be sent to the local and county police departments. If the candidate had any of the above-described out of city contacts within a jurisdiction outside of NYS, then in addition to local and county police departments, the state police must also be contacted.¹¹⁸

The Commission focused on the Department's adherence to the following core steps: 1) Were DCJS and FBI printouts of the candidate's criminal history obtained prior to the date of appointment;¹¹⁹ 2) If an arrest was disclosed on either of these printouts, was there sufficient follow-up, including obtaining a copy of the complaint and arrest report, the arresting officer's

¹¹⁶ For discussion of this issue see footnote 50 at pp. 22-23.

¹¹⁷ APD Manual at p. 113.

¹¹⁸ Id. at p. 127.

¹¹⁹ Similar to the DCJS printout, the FBI printout is also based on a comparison of the candidate's fingerprints.

and complainant's statements, an original copy of the official disposition, and a Memo 17B from the candidate; 3) Was there adequate investigation in connection with the candidate's receipt of a c-summons, including receipt of a Memo 17B from the candidate, receipt of the official disposition slip for the summons, and a copy of the summons; 4) Was an APD-45 transmitted where required and was appropriate follow-up investigation conducted.

The Commission determined that in 81 files (100%) examined,¹²⁰ the DCJS printout was received and reviewed by the date of appointment and that in 69 of the cases (85%) the FBI printout was similarly reviewed. From the DCJS and FBI printouts obtained, APD received derogatory information regarding only one candidate. In that case, the candidate had two violations for driving while impaired. In connection with one of these violations, APD did not perform adequate follow-up.¹²¹ However, in all 81 of the cases in this part of the Commission's sample the Department was in compliance with its standards for disqualification based on criminal convictions.¹²²

Twenty candidates in the Commission's sample received a c-summons. These summonses related to possession of an open container of an alcoholic beverage in public,

¹²⁰ It should be noted here that this sample number (81) excludes the 14 files which had redacted criminal histories. Before submitting the 95 files to the Commission, the Department redacted information primarily regarding the judicially-sealed criminal and summons histories of 15 candidates. (One of the files contained redactions related to the candidate's medical history.) Owing to the redactions, the Commission cannot comment on whether 14 of these 15 candidates met APD's in-house qualifications in the arrest/summons area. (The candidate whose file had redacted medical information had no criminal convictions or summonses.) The Commission does note that 14 of the 15 candidates in the redacted group met APD's other in-house qualifications in the areas related to driving and employment. (One file was missing a NYS Department of Motor Vehicle ("DMV") abstract and thus no conclusion could be drawn as to that candidate's complete driving record).

¹²¹ Regarding this incident, the candidate did not complete a Memo 17B, nor were the underlying court records obtained.

¹²² This conclusion is based on receipt of DCJS printouts in 81 cases and FBI printouts in all but 12 of the cases.

disorderly conduct, and other offenses. Of these 20, APD investigators received a Memo 17B from the candidate in all but two instances (90%). In only nine of these 20 cases (45%), however, did APD obtain a copy of the summons. In 14 of the cases (70%), APD received an official disposition of the c-summons.

Eighty-two of the applicants in the Commission's sample either resided, worked, attended school, or received a summons outside of NYC.¹²³ Of these 82 cases where APD investigators were required to transmit an APD-45 to the local, county or state law enforcement agency, there is evidence in the file that APD-45's were sent to each relevant agency in only four cases (5%). In three of these four cases, all APD-45's were returned. Of these three, APD received complete information and none of the APD-45's contained derogatory information about the candidate or a request that APD contact the agency. Overall, out of a total of 414 jurisdictions where the candidates' had significant contacts outside of NYC, there was evidence that only 62 APD-45's (15%) were transmitted to law enforcement agencies in these locales.

E. Driving History

Evaluation of the candidate's driving history also is a critical component in determining a candidate's fitness to become a police officer. The existence of a bad driving record, depending on its seriousness, indicates a lack of responsibility and respect for the law. Additionally, it may provide evidence of a candidate unable to control his or her temper and prone to confrontations when faced with stressful conditions, character traits the Department would want to consider before hiring a candidate. Moreover, because so many of a police officer's duties may involve

¹²³ In this group of 82 candidates, a total of 414 separate locales were involved.

driving a car, each candidate is required to have a valid NYS driver's license. Therefore, a thorough background investigation is required in this area because derogatory information could lead to disqualification of the candidate pursuant to Departmental standards.¹²⁴

To comply with APD standards in conducting this aspect of the background investigation, the APD investigator must transmit, to the NYS DMV and the motor vehicle bureau in each state where the candidate may have been licensed, an inquiry regarding the candidate's driving history. This inquiry seeks information about the candidate's driving history, including: whether the candidate's license was ever suspended or revoked; whether the candidate received any summonses and the nature of the violations; whether the candidate was ever the driver in a vehicle accident; and vehicle ownership history.¹²⁵

Once the document is completed and returned, it is incumbent upon the investigator to review it for missing or inconsistent information and to take appropriate follow-up measures. If the candidate's license was ever suspended or revoked, if the candidate received any moving violations, or if the candidate was the driver in a vehicle accident, he or she must provide the Department with a statement (Memo 17B) describing the facts and circumstances of each event.¹²⁶

In the event the candidate was the driver in a vehicle accident, the APD investigator is required to perform additional investigative steps, including: obtaining the vehicle accident

¹²⁴ See pp. 18-21 for discussion of in-house disqualifiers.

¹²⁵ While APD investigators are required to take additional steps in this aspect of the background investigation, including a review of the candidate's Parking Violations Bureau history, the Commission focused its analysis on the steps described above.

¹²⁶ APD Manual at p. 140.

report and statement from the company which insured the candidate on the date of the accident. The accident report, completed by the police officers responding to the accident, is obtained to verify the dates of the accident, the sobriety of the candidate at the time of the accident and whether there was personal injury or property damage. The insurance statement, completed by the candidate's insurer, is obtained to verify the date of the accident, and the status of any outstanding claims against the candidate.

In all of the cases the Commission reviewed, the candidate possessed a valid NYS driver's license prior to appointment, in compliance with the Department's minimum eligibility requirements in this area.

Notwithstanding this fact, some deficiencies were noted in the Department's review of candidate's driving histories. In six of the Commission's sample of 95 candidates, APD did not receive an abstract from the DMV by the date of appointment. In 54 investigations, derogatory information was disclosed, including license suspensions and the receipt of moving violations. In 49 of these 54 investigations, APD obtained a Memo 17B from the candidate for every incident. In 55 investigations the candidate was the driver in at least one vehicle accident. (In total, candidates were drivers in 106 accidents.) In 32 of these accidents the investigator did not obtain an accident report, and in 19 the investigator did not obtain a statement from the candidate's insurance company indicating the status of any outstanding claims. In six of the 55 cases where the candidate was the driver in one or more accidents, the investigator did not obtain a Memo 17B detailing the circumstances surrounding at least one of the accidents.

F. Review of Investigations of Candidates Not Hired

In addition to reviewing cases where candidates had met the Department's qualifications and were hired, the Commission reviewed a random sample of 20 cases where the Department determined that the candidate did not possess the requisite qualifications. The Commission reviewed cases in this category to determine how the Department applied its internal standards for disqualification and whether the background investigations performed were qualitatively different than those performed in cases where the candidate was hired.

In general, the Commission found that candidates were rejected for engaging in disqualifying conduct as set forth in the Department's internal criteria or those set by the legislature, including: poor driving records, failure to obtain 60 academic credits, and failure to meet age or citizenship requirements. The Commission believes that the Department's determinations in these cases were appropriate.

G. Post - February 1997 Investigations

The Commission specifically identified those investigations which commenced after February 1997 to determine whether there were qualitative differences in the investigations of this group compared to those investigations which commenced prior to this time. Of the Commission's sample of 95 candidates, 16 of these investigations were commenced post - February 1997. The Commission found that the quality of these 16 investigations, were, as a general matter, neither materially better nor worse than those commenced before March 1997. Most significantly, the Commission did not find that APD failed to meet its investigative standard at a higher rate than in the pre-March 1997 group.

VI. RECOMMENDATIONS

The Commission's recommendations, in large measure, center around the importance of investigators making contact with former neighbors, employers and educators, whether by telephone or in person. These recommendations, as well as others, are discussed below.

A. Other Jurisdictions

In order to put the issue of personal contact with relevant persons into a broader perspective, the Commission compared the Department's approach to contacting the applicant's neighbors and employers with that of other police departments around the country. These included the LAPD, Boston PD, Chicago PD, Miami PD, and the Dallas PD. Each of these departments emphasize the critical importance of personal contact between the background investigator and residential, employment, and other references.

Background investigators for the LAPD, for example, are required to conduct all interviews in person if possible. The investigation manual requires that at least one supervisor be interviewed, as well as at least one co-worker, from each former place of employment. Investigators are expected to travel throughout the state of California and even, in exceptional circumstances, out-of-state, to conduct these interviews. The Chicago PD also requires in-person interviews as part of the background investigation. For example, it is mandatory that the investigator make a personal visit to the candidate's home, and interview at least four neighbors "who know and can identify (photo ID) the candidate."¹²⁷ The investigator is required to bring a photograph of the applicant so that neighbors of the candidate can identify him or her. As

¹²⁷ Chicago PD, "Background Investigation Procedures and Conduct of Personnel Assigned to Investigations," at p. 3.

discussed above, the NYPD accepts the response of a neighbor who has no personal knowledge of the candidate as sufficient to comply with its standards.¹²⁸

B. Personal Contact with Neighbors, Employers and Schools

As discussed above, the Department has expressed the view that for varying reasons personal contacts with neighbors who know the candidate, employers and schools is unlikely to provide meaningful information. While various of these concerns are legitimate, the net result is that in New York City a police officer may be hired even though the Department has never interviewed a single person who knows the candidate. The Commission does not believe that this is the best way to assure that those hired to be New York City police officers are suitable for the job. Some personal contact with a candidate's neighbors, educators, and prior employers who actually know the applicant is critical to developing a meaningful evaluation of the candidate. In New York the mere fact, for example, that people in a neighborhood have never heard of the candidate does not seem to be particularly meaningful evidence that the applicant is law abiding. Indeed, the Department has recognized the distinction between an "investigator" and a "collator of paper," cautioning investigators that it "should always be remembered that these forms, and other similar mailed inquiries, are only starting points for the investigative process. Anyone can send out forms; a professional investigator will use that form as a basis for

¹²⁸ The Commission also notes here the importance of making a visit to the applicant's residence: such visits can serve several purposes, including revealing significant information about the candidate's lifestyle and confirming that the applicant actually resides where he claims he does. In this last regard, the Commission points to a probationary police officer and graduate of the April 1997 class who resigned in September 1997 after it came to light that he was residing in New Jersey, contrary to the affidavit of a relative provided by the candidate claiming that the candidate lived in New York City. The probationary officer's true residence was learned after an anonymous caller reported it to the Department's Internal Affairs Bureau ("IAB"). By the time an investigation was conducted and the probationary member was confronted with IAB's findings, the officer had served as a police officer for about five months.

gathering as much information as possible.”¹²⁹ Moreover, because individuals contacted may not be forthcoming in a written response, personal contact is all the more important.

The Commission therefore recommends that the Department make greater efforts to have personal contact with individuals who actually know the applicant.¹³⁰ To some extent this can be accomplished by complying with existing investigative standards and making clear that satisfaction of those standards requires contact with people who knew the prospective police officer. While implementing such an approach is made difficult by the large numbers of applicants who must be investigated, doing so nonetheless should be a priority.

C. Staggering Police Hiring

As discussed above, the timing of the April 1997 hire placed tremendous strain upon the APD. The total class ultimately was about 1,300 officers. As noted, APD learned as late as March 1997 that it needed to complete the background investigations of an additional 600 candidates.¹³¹ Although the investigations of approximately 100 of these additional candidates had been initiated prior to that time, as discussed above,¹³² about 500 of the investigations were begun after February 1997. At best, to complete a thorough investigation of so many candidates within a little more than a month placed a tremendous burden on the investigative resources of

¹²⁹ APD Manual at pp. iii, 78.

¹³⁰ Contact with a candidate’s former neighbors may be especially valuable, given that such neighbors may be more forthcoming with information about the applicant than current neighbors.

¹³¹ As discussed in “Building Integrity,” “[a] breakdown in hiring standards occurs frequently when the police department feels compelled to hire a substantially increased number of officers, usually because of an increase in crime. . . [H]iring to fill a large number of new positions and attrition vacancies can create chaos for a [department’s background investigations unit]. “Building Integrity,” at p. 18.

¹³² See discussion at p. 6.

the APD. The Commission recognizes that there are a number of valid factors which contribute to the need to hire a large number of officers within a short time frame. These include the implementation of new crime fighting initiatives, the availability of funding, and other variables outside of the Department's control.

Given the problems created by hiring large numbers of candidates within a short period of time, the Commission believes, however, that efforts should continue to be made to stagger hiring over the course of the year so that there are more, but smaller classes.¹³³ Indeed, all of the departments surveyed by the Commission stagger hiring throughout the year, thereby allowing their background investigations units to handle the investigations evenly and thoroughly. For example, the Dallas PD, which is comprised of approximately 3,000 uniformed officers, tries to appoint a new class at quarterly intervals. The Miami PD and LAPD also appoint new police officers on a quarterly basis. Further, scheduling classes on a more standardized basis can avoid the loss of qualified candidates who: 1) may be constrained to accept employment elsewhere because of protracted periods between classes; or 2) may reject an offer to attend Academy training because the offer was received on short notice (due to unanticipated increases in class size) and therefore conflicts with other employment or academic commitments.

D. Out-sourcing

The Commission also recommends that as a further and/or alternative measure to ease the burden of hiring large numbers of police officers, the Department should consider out-sourcing a percentage of background investigations to a private contractor.

¹³³ The Commission is cognizant that such staggering would require coordination with the Police Academy so that it would be able to accommodate new recruits on a more regular basis.

In its discussions with the Department, the Commission learned that the Department agrees it is desirable to stagger classes to reduce their size and thereby improve the efficiency of the background investigation process. The Department, however, does not agree, that out-sourcing is a viable alternative. The Department maintains that it examined this issue in 1996 and concluded that private contractors could not perform with similar levels of expertise in candidate investigations. Additionally, the Department believes that out-sourcing would require APD to duplicate the work of the private contractor since it would have to verify the information provided to ensure its reliability prior to its use in an unfavorable employment decision.

Out-sourcing of background checks, however, is used by federal law enforcement agencies and the Department's rationale for rejecting this approach is not particularly persuasive. Retired federal agents, for example, are used as contractors by such federal agencies as the U. S. Immigration and Naturalization Service ("INS"), the Bureau of Alcohol, Tobacco and Firearms ("ATF"), the U.S. Secret Service, and the U.S. Customs Service. Additionally, the U.S. Marshals Service anticipates out-sourcing its background investigations by the end of this fiscal year. Therefore, there seems no real reason why such individuals could not be used by the Department without it having to verify the information they provide.¹³⁴ Moreover, according to the Department, individuals who know the candidate may, in part, be reluctant to speak with Departmental officers because they feel intimidated by their rank or position. Out-sourcing may

¹³⁴ Each of these agencies use private contractors to review candidates' backgrounds for various positions, including armed law enforcement officers, such as INS border police. INS contracts with a private corporation which conducts similar background checks nation-wide. This corporation, in fact, was originally staffed by former employees of the United States Office of Personnel Management, who conducted similar background investigations while employed by the government. In contrast, the U.S. Secret Service, which has out-sourced in some capacity since 1984, and ATF both contract with their own former employees. Each of the federal agencies told Commission staff that out-sourcing has enabled them to free up precious investigative resources and has resulted in the greater deployment of this personnel to law enforcement duties.

partially address this issue insofar as these individuals may be more comfortable talking to civilians who are not actual employees of the Department. Additionally, federal agencies Commission staff spoke with stressed the importance of personal contact, face-to-face where possible, with individuals who know the candidate. From the Commission's perspective, this approach, also shared by other major police departments,¹³⁵ is critical to any meaningful background investigation. In the event the background investigation function is out-sourced, the Department can specify how it wants each investigative step to be completed, including requiring the contractor to conduct personal interviews with neighbors, educators, and employers who know the candidate. Moreover, out-sourcing can release background investigators for regular police work.

E. Evaluate Current In-House Disqualifiers To Determine If Too Permissive

As discussed supra, in early 1995 the Department established a series of in-house criteria for candidate character standards. While with the establishment of these criteria the Department made significant gains in raising and making uniform character standards, the Commission notes that in two core areas -- arrest and summonses and driving record -- the Department's standards for qualification may be too permissive. Under current criteria, for example, a candidate with two misdemeanor convictions, even where the underlying arrests were for felonies, is not presumptively disqualified.¹³⁶ Moreover, if the underlying arrests were not felony charges, a candidate is not presumptively disqualified under current standards regardless of the number of

¹³⁵ See discussion above at pp. 59-60.

¹³⁶ This applies to when the convictions occurred more than five years before the date of application. Candidates with a misdemeanor conviction occurring between two to five years before the date of application, where the underlying charge was a felony, are not presumptively disqualified from the Department either.

misdemeanor criminal convictions.¹³⁷ Further, a candidate with as many as five c-summonses, received more than five years before the date of application, would not be disqualified under the in-house criteria. In the driving history area, a candidate with as many as five hazardous moving violations is not presumptively disqualified; and one with as many as five separate license suspensions meets the Department's in-house criteria.¹³⁸

While an evaluation of these standards has not been the primary focus of this study, the Commission recommends that the Department evaluate the criteria to determine whether they should be more restrictive. While the Department properly points out that these are only minimum criteria, and no one in the Commission's sample incurred this many convictions, violations, or suspensions, which is indicative that the Department's standards in practice are more restrictive than its written policies, the Department should review its written protocol because the apparent permissiveness of these criteria creates a false impression of the Department's level of tolerance for illegal conduct in its applicants.

F. Expanding Departmental Disqualifiers to Include Review of Youthful Offender Adjudications

The Commission further recommends that the automatic disqualifiers be expanded to include review of candidates who were adjudicated as youthful offenders. While the Department does review the facts and circumstances surrounding youthful offender adjudications, the

¹³⁷ Given that certain misdemeanors constitute serious crimes, the Department should consider eliminating the distinction between misdemeanor convictions where the underlying case was a felony, and other misdemeanors. The Commission noted that none of the candidates in its sample of 81 cases with non-redacted criminal case histories were convicted of any crime. This may be indicative that, regardless of the Department's written standards in this area, it carefully considers candidates with any criminal convictions before hiring.

¹³⁸ Received more than five years before the date of application.

Department should consider the proximity of the incident to the date of application and develop a standard for presumptive disqualification.

Finally, as discussed above, although candidates execute a general release authorizing law enforcement agencies to provide juvenile delinquent and youthful offender records of a candidate to the Department, the Commission recommends that efforts be taken to amend New York's Criminal Procedure Law to allow the Department statutory access to all official records and papers related to juvenile delinquent and youthful offender cases.¹³⁹ Such records are necessary to fully assessing the criminal record of a candidate to the NYPD.

G. Use of Polygraph Examination As a Screening/Hiring Tool

During the course of the Commission's study and in its discussions with other law enforcement agencies, it learned that pre-employment polygraph screening is being used by a number of police departments outside of New York City as an integral part of the hiring/background investigation process.¹⁴⁰ According to the departments which utilize the polygraph, if used appropriately, polygraph examinations can provide an effective means for obtaining the fullest disclosure from candidates regarding past drug use, thefts, and other character and psychological-related problems. According to these departments, the examination has two primary benefits: 1) as a means to encourage truthfulness; and 2) to assist in ascertaining whether an applicant has lied about certain critical background matters.

¹³⁹ CPL Secs. 720.35(2) and 725.15 provide that all official court and police records related to a youthful offender adjudication or a juvenile delinquent proceeding "are confidential and must not be made available to any person or public or private agency."

¹⁴⁰ These departments included the LAPD, Dallas PD, Chicago PD, Miami PD, the FBI, the New York State Police and both the Nassau and Suffolk County Police Departments.

The NYPD has recognized the potential effectiveness of polygraph examinations in the hiring process. In 1994, in response to a recommendation by the Mollen Commission that polygraph examinations be used, the Department agreed that polygraph examinations should be utilized, but only to verify information requested on the PHQ.¹⁴¹ In recent interviews conducted in connection with this study, the Department has reiterated its interest in using polygraph examinations as part of the hiring process, and is currently considering the budgetary and legal issues involved. The Commission recommends that the Department come to a final determination within the next six months.

Each of the departments surveyed by the Commission that utilize pre-employment polygraph screening do so in connection with the PHQ or its equivalent. Used in connection with the personal data provided by the candidate, the polygraph encourages candidates to be forthright about a range of topics, including prior drug use, thefts, assaults, employment history, criminal activity, traffic violations, and other critical character areas. Some departments use the polygraph examination to compare answers given by the applicant in the PHQ, and do not proceed with medical and psychological tests, or with the character background investigation of the candidate, until the results of the polygraph examination are analyzed and a determination is made as to whether the candidate is disqualified based upon the department's hiring criteria. By delaying the full background investigation until the polygraph examination results are analyzed, these departments are able to reduce the costs of the examination by eliminating the expense of conducting a full investigation of candidates who will ultimately be rejected because of

¹⁴¹ NYPD Response to Mollen Report, p. 3; Mollen Report, p. 114 ("Recruitment and Screening").

information learned during the course of their investigations.¹⁴²

A second approach, that has been taken by LAPD to help defray the expenses involved with a polygraph examination, is the discretionary use of the examination. In this method, the LAPD informs all candidates that answers given in the PHQ are subject to polygraph examination.¹⁴³ Depending upon the answers given, the LAPD is then able to apply to the Civil Service Board to request that the candidate submit to a polygraph examination.¹⁴⁴ This method recognizes that a key value of the polygraph examination is in encouraging full disclosure by the candidate because of the possibility that his or her answers may be subjected to a polygraph exam.¹⁴⁵

¹⁴² The Commission discussed with the Department the costs of implementing and maintaining polygraph examinations. According to the Office of the Chief of Personnel, assuming the Department does not contract-out the examination, the primary costs involved are those associated with the purchase of equipment and training. These would amount to approximately \$300,000. Additionally, the examination would use approximately 2-4 hours of personnel time per candidate. The Dallas P.D., which has utilized polygraph examinations in hiring for approximately 25 years, found that because of overtime costs associated with using their own personnel, it has been less expensive for its department to contract-out the examination.

¹⁴³ As noted on the instructions given to applicants completing part one of the LAPD's Background Interview questionnaire, "It is imperative that you answer all questions **truthfully**. Your honesty is evaluated. A 'yes' answer is not necessarily disqualifying, however, any **omission, falsification, misstatement, untruthful response, or discrepancy** will be cause for disqualification from the hiring/background process. In addition to a complete background investigation, you may be asked to submit to a **polygraph examination**." (emphasis in original). LAPD questionnaire at p. 1.

¹⁴⁴ The LAPD has specific policies related to the use of a polygraph examination. As stated in its Administrative Investigation Section Manual, at p. 5, "A polygraph exam may be recommended when a candidate makes inconsistent or evasive statements concerning potentially disqualifying conduct. The concerned statement must represent a clear attempt to withhold information or contradict previous statements which, if true, would be grounds for disqualification . . . and cannot be proven or disproved through the normal investigative process."

The Chicago P.D. also utilizes polygraph examinations on a case-by-case basis, and must apply to its Civil Service Commission for permission to utilize pre-employment polygraph screening.

¹⁴⁵ The "truth-telling" benefits of a polygraph examination in the hiring process are greatest, according to one law enforcement expert the Commission consulted, when the exam is combined with drug testing. Michael D. Roberts, Ph.D., Law Enforcement Psychological Services, Inc. ("LEPS, Inc.") ("The Role of the Personality Assessment Inventory Police and Public Safety Selection Report in the Applicant Screening Process"). In one study conducted by LEPS, Inc., for example, admission of marijuana use rose from 23.5% to 35.2% after polygraph examination was adopted in conjunction with drug screening. Given the apparent correlation between prior

The Department has noted that in addition to the expenses involved in making a polygraph examination part of the hiring process, there are legal and policy issues which must be addressed. These include: asking questions that are acceptable under federal hiring guidelines; not making the polygraph examination results the sole determination of whether to hire an individual; and researching studies that question the reliability of polygraph results. These issues have been successfully addressed by other departments. The Commission recommends that the Department continue to review and evaluate the potential use of polygraph examinations as a component of the background investigation process.

H. Streamlining/Improving Investigative Documents

1. Expanding the PHQ and Other Inquiries

The PHQ is the fundamental means by which the APD investigator shapes the background investigation of a candidate.¹⁴⁶ The PHQ contains the candidate's residential, academic, and employment histories, as well as disclosures regarding driving history, criminal record, and drug and/or alcohol use.

The PHQ is therefore a critical part of a candidate's background investigation, and is indeed the single most important document in the candidate's file. The document provides the framework for APD's decision whether to hire a candidate. This is particularly true given the fact that there is not substantial personal contact (either by telephone or in person) between APD

marijuana use and subsequent corruption (data gathered by the International Association of Chiefs of Police -- see "Building Integrity" report which showed that 66% of officers fired for cause had used marijuana compared to 34% of officers in good standing), such admissions provide critical information in assessing the qualifications of a candidate.

¹⁴⁶ According to the Department, the PHQ was last updated by the Department in 1993 in order to comply with the Medical Disability Act.

investigators and a candidate's former employers, teachers, and other potential references. The importance of eliciting reliable and full information about the candidate in the PHQ cannot be understated.

In addressing this issue, the Commission has noted specific weaknesses in the PHQ. Below are specific recommendations for its improvement.

As background to these recommendations, Commission staff reviewed the PHQs or their functional equivalents, of a number of other police departments and law enforcement agencies. These included the Boston PD, Dallas PD, LAPD, Miami PD, Chicago PD, and the NYC Department of Investigation ("DOI"). In comparing the PHQ's of these agencies, two clear issues emerged. One, the Department's PHQ should be enlarged to elicit fuller disclosure by candidates.¹⁴⁷ And two, the format of the PHQ should be modified to provide more room for answers and so that it is clearer visually. Each of these recommendations is addressed below.

The Department should expand the PHQ to include a broader range of questions, and include more specific questions in various topics. The LAPD's "Personal History Form" ("PHF") is approximately twice as long as the Department's and seeks a far greater amount of candidate information. In the area of residential information, for example, the LAPD's questionnaire requests information (employment, ages, etc.) on the individuals with whom the candidate lived, and the names of any and all "cohabitants" at that residence. Moreover, LAPD's questions regarding candidate's prior use of specific drugs is broader and more detailed than the Department's. In the critical area of prior contacts with courts, the PHF asks for information

¹⁴⁷ While it is impossible to determine whether the personal history questionnaires used by other police departments result in measurable differences in screening-out inappropriate candidates, it seems clear to the Commission that forms requiring fuller disclosure are more effective in gathering background information.

regarding both adult and juvenile records (as the Department's PHQ does), but also seeks to know whether the candidate has "either as an adult or a juvenile . . . been detained for a criminal investigation, or named as a suspect in a police report, or held on suspicion, or questioned, or fingerprinted by a law enforcement agency or military authority, even as **victim** or **witness**?"¹⁴⁸ While the Department does ask candidates many similar questions, the specificity of the above quoted language would be an improvement in the Department's questionnaire, particularly since after an officer is hired the Department places such reliance on the ability to decertify an officer based on responses to the questionnaire.¹⁴⁹ Though none of this information by itself may disqualify a candidate, it can provide useful material to assess a candidate's overall ability to be a police officer.

Additionally, the LAPD, as do other police departments, including the Dallas PD and Chicago PD, asks a series of detailed questions requiring a "yes" or "no" answer that are directed at specific aspects of a candidate's background. These are especially formatted for later comparison to a polygraph examination, but could be used even without polygraphic follow-up. Some of these questions include the following: "Have you ever been involved in a domestic violence incident (struck or pushed your spouse or domestic partner)?" "Have you ever lived with or associated with anyone who was involved in criminal activity, including drug use?" "Have you ever brandished a weapon (any type of weapon)?" "Have you ever indicated a

¹⁴⁸ LAPD, "Personal History Form for Police Officer Applicants," p. 29 (emphasis in original).

¹⁴⁹ The NYPD's PHQ asks applicants to "list all incidents in which you were a complainant, defendant, or witness in a criminal court case, a Family Court proceeding, an administrative or an investigative hearing by a city, state, Federal agency or a Grand Jury." It also asks, "were you ever the subject/witness or have you ever been questioned during a police investigation in which you were not charged with a crime?" PHQ at p. 7.

residential address on your auto insurance policy which was not your actual residence at the time?"; "Have the police or any law enforcement agency ever been to your home or any of your residences?"; "Do you believe your spouse(s) will give you an unfavorable recommendation?"¹⁵⁰

The approach of breaking down the various components of the background questionnaire into more specific questions serves several positive functions. First, it forces the applicant to think carefully about past conduct and behavior. Second, by providing specific information, the candidate can later be questioned about particular answers given without a claim that he or she did not understand the question or gave an inapplicable answer. Finally, given the availability of the decertification process for the NYPD, as discussed supra, should the Department later learn important derogatory information about a candidate, the candidate's unmistakable response in the PHQ could be used as clear grounds for decertification.

The Commission further identified several areas in which the PHQ's structure, content, and style could be improved. The form should:

- Elicit information about car accidents in which the applicant was not the driver of the vehicle. Such information could prove valuable in revealing relevant information about the candidate, such as where the applicant was a passenger in a car being driven by an intoxicated driver.
- Require disclosure from the candidate whether he or she was a litigant or witness in a civil lawsuit;

¹⁵⁰ See LAPD Administrative Investigation Section, Background Interview, Part 1. Another example of detailed questions regarding a candidate's past conduct is provided by the Boston PD's "Recruit Candidate Information Form" which asks candidates whether they have been involved in a fight or an accident while drinking; or ever been taken into protective custody while drinking.

- Require disclosure from the candidate whether he or she was ever named as the petitioner or respondent in a temporary or permanent order of protection;
- Require disclosure from the candidate whether he or she was ever named in a civil judgment, or found liable for restitution, damages or other relief;
- Require disclosure from the candidate whether he or she has ever been disciplined by any licensing or certifying agency;
- Rewrite critical documents, including the PHQ, to include in prominent lettering the warning that the submission of knowingly false statements is a crime, punishable by the imposition of a fine or imprisonment or both, and constitutes as well grounds for disqualification. While the substance of this warning is currently included on the PHQ, it is not printed boldly and it can be stated in clearer and more emphatic terms.

The Commission further observed that improvements could be made in a number of other inquiries. These improvements include:

- Expanding the DMV information request form to include information regarding the registration history of the applicant's motor vehicle license plate; such information could indicate other vehicles that have been driven by the applicant, and could therefore reveal a broader history of the applicant's driving/accident record.
- Eliciting on certain forms, including the APD-27 (Public Assistance Form) and APD-16 (School Inquiry Form), any aliases, nicknames, or other names the candidate may have used.
- Requiring that an APD-19 be sent to the relevant state or federal Inspector General's Office for any candidate who has been employed by a state or federal agency.

- Requiring that an NLETS inquiry be made of all family members of the candidate; such an inquiry can be expeditiously made and can provide more valuable information than that received from the Department's Intelligence Division.
- Requiring that the campus security inquiry (APD-45) be sent to all schools the candidate has attended, regardless of whether he or she resided on campus.

2. Modifying APD Forms 14, 16, 19 and 25

Too often during the course of the review of the Department's background investigations, the Commission observed that employers, schools, and others failed to indicate whether or not they possessed derogatory information about the candidate. Although the Commission recognizes that former employers and school officials may feel vulnerable to litigation should they provide derogatory information about a candidate, APD investigators should make every effort to assure employers and school officials that the candidate has released them from liability, and must be willing to probe employers and school officials for derogatory information. Moreover, the concern over litigation makes personal contact by an investigator with former employers and school officials that much more important.¹⁵¹ Certainly some employers and school officials who otherwise would be unwilling to put into writing derogatory information about a candidate will, with proper investigative prodding and adequate assurances about the candidate's release regarding such information, be willing to discuss the candidate over the

¹⁵¹ Indeed the Department recognizes this issue. Though the Commission's sample did not contain any face-to-face interviews with candidates' employers, the APD Manual recommends that when such interviews do take place, the investigator should always show the employer a copy of the APD-25 (Release of Information Form) to "soothe any fears of lawsuits that an employer may have." APD Manual at p. 77. The APD-25, to be executed by the candidate, authorizes the Department to make inquiry of the candidate's former employers regarding his character, integrity, and reputation; it does not, however, contain a waiver releasing the employer from liability.

phone or in person.¹⁵²

Within this context, the Department should consider revising critical forms used by the Department to elicit information about the candidate: specifically the APD-16 (schools), APD-19 (employers), and APD-25 (general release for all previous employers). Only the APD-19, which is executed by the candidate, contains an authorization for the Department to make inquiry regarding a candidate's character and integrity **and** explicitly releases the employer from liability as a result of such disclosure. The APD-19 specifically states, "I acknowledge by this authorization that I release you [the named employer] from any obligation and liability in the disclosure of the contents [of my employment records] and the professional observations or opinions contained therein."¹⁵³ Additionally, the APD-19 contains a provision whereby the employer can elect to have a personal interview with the APD investigator to discuss the candidate's background. The APD-16 and 25, however, are not as comprehensive. While the APD-16 and 25 are executed by the candidate and contain authorizations to inquire, they do not contain waivers of liability.¹⁵⁴ The Commission recommends that each of these forms should be modified to be consistent with the APD-19. Moreover, each of these forms, including the APD-19 should highlight the release from liability, and should make clearer the option of making personal contact with the investigator to discuss the candidate's background.

The Department informed the Commission that it has already begun to revise its forms to address the issues raised in this study. Additionally, while perhaps not legally required, the

¹⁵² APD Manual at p. 77.

¹⁵³ APD-19. Notably, the release applies only to information contained in the applicant's employment records. The Commission recommends that the release be changed to include "the professional observations or opinions contained in employment records and statements of knowledgeable individuals."

¹⁵⁴ The APD-16 does contain a provision for the school to request a personal contact from the APD investigator.

Department's Deputy Commissioner of Legal Matters is currently evaluating a legislative proposal which would hold harmless employers who disclose detailed work history information, both favorable and unfavorable, when there is a signed release from a police candidate.

COMMISSION TO COMBAT POLICE CORRUPTION

The Commission to Combat Police Corruption was created pursuant to Executive Order No. 18 of 1995. The Commission is mandated to monitor the New York City Police Department's anti-corruption systems. To accomplish this, the Commission conducts audits, studies, and analyses regarding the Department's anti-corruption policies and procedures. This includes studies to determine the effectiveness of the Department's systems and methods for: investigating allegations of corruption; gathering intelligence; implementing a system for command accountability, supervision, and training for corruption matters; and such other policies and procedures relating to corruption controls as the Commission deems appropriate.

COMMISSIONERS

Richard J. Davis, Chair

Currently, Mr. Davis is a partner with the law firm of Weil, Gotshal and Manges. He was Assistant Secretary of the Treasury (Enforcement and Operations) between 1977 and 1981, where he supervised the activities of the Secret Service, the Customs Service, the Bureau of Alcohol, Tobacco and Firearms and the Federal Law Enforcement Training Center. He had previously served as an Assistant United States Attorney in the Southern District of New York from 1970-73 and as an Assistant Special Prosecutor for the Watergate Special Prosecution Force. In 1987 he was appointed to a Commission to review the operations of the Philadelphia Police Department. In 1993 he served on a panel of experts appointed by the Justice and Treasury Departments to provide advice in addressing situations which may occur in the future similar to those which took place in Waco, Texas.

Charles M. Carberry

Mr. Carberry is currently a partner with the law firm of Jones, Day, Reavis & Pogue. He is a former federal prosecutor, having served from 1979 through 1987 as an Assistant United States Attorney in the Southern District of New York (including service as Chief of the Securities and Commodities Fraud Unit and Deputy Chief of the Criminal Division). Pursuant to his appointment by the federal district court, from 1989 to the present, Mr. Carberry oversees investigations and administrative prosecutions of allegations of corruption and dishonesty involving the Teamsters Union. Mr. Carberry is on the boards of editors of the White Collar Crime Reporter, Business Crimes Bulletin, and the Money Laundering Law Report. He has written numerous articles and has spoken frequently at seminars on white collar crime, securities fraud, and money laundering.

Rhea Kemble Dignam

Ms. Dignam currently is a Vice President and Deputy General Counsel at New York Life Insurance Company. She is a former federal and state prosecutor, having served from 1976 through 1988 as an Assistant United States Attorney in the Southern District of New York (including service as Chief, Narcotics Unit; Chief, Public Corruption Unit; and Executive Assistant United States Attorney). From 1988-1989 Ms. Dignam was the Chief Assistant District Attorney in Kings County and served as the Executive Deputy Comptroller, City of New York from 1990-1993 in which position she gained extensive experience monitoring the work of City agencies.

Ann Hayes

Ann Hayes is the Chief Executive Officer of Strang Hayes Consulting, Inc., a leading New York City investigative management firm. She is a former Special Agent with the Federal Drug Enforcement Administration, having served from 1984 through 1988. As an undercover agent, Ms. Hayes was directly involved in infiltrating and combating organized crime, and later supervised numerous high-level, international investigations. Ms. Hayes was the first woman to graduate first in her class from the DEA Agent Basic Training Academy. Her law enforcement career began as a police officer following graduation from college. In 1987, Ms. Hayes served on the President's Organized Crime Drug Task Force. Ms. Hayes was recently appointed by Mayor Giuliani to the Mayoral Task Force on Police/Community Relations, which was established to improve the relationship between the police and community in New York City.

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The Commission would like to extend its appreciation to associates Hubert Yang and Robert Pfeffer, and summer associate Jacqueline Rubin, of the law firm Weil, Gotshal & Manges, and Andrew Eliot, a summer intern with the Commission, for their contribution to this report.

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