

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

SUPREME JUDICIAL COURT

**IN THE MATTER OF THE
PROBATION DEPARTMENT
OF THE TRIAL COURT**

SJC No. 0E-123

**REPORT OF
THE INDEPENDENT COUNSEL**

November 9, 2010

**PAUL F. WARE, ESQ.
INDEPENDENT COUNSEL**

**GOODWIN PROCTER LLP
EXCHANGE PLACE
BOSTON, MA 02109
(617) 570-1000**

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COMMONLY USED ACRONYMS

ACPO	Assistant Chief Probation Officer
AOTC	Administrative Office of the Trial Court
APO	Associate Probation Officer
CPO	Chief Probation Officer
CJAM	Chief Justice for Administration and Management
FACPO	First Assistant Chief Probation Officer
ELMO	Electronic Monitoring
OCC	Office of Community Corrections
OCP	Office of the Commissioner of Probation
PO	Probation Officer
POIC	Probation Officer in Charge
RA	Regional Administrator/Regional Supervisor

EXECUTIVE SUMMARY

I. INTRODUCTION

By order dated May 24, 2010, the Massachusetts Supreme Judicial Court appointed Independent Counsel for purposes of an investigation of alleged wrongdoing within the Massachusetts Probation Department.¹

In that order, the Court instructed that:

- (1) Paul F. Ware, Jr. Esquire of Boston be, and hereby is, appointed Independent Counsel with the powers of Special Master and Commissioner to conduct a prompt and thorough administrative inquiry into alleged improprieties with respect to the hiring and promotion of employees within the Probation Department, as well as other practice and management decisions within the Probation Department that have been called into question, and to file with this Court within ninety days of this date, or as soon as possible, a report of his findings, conclusions, and recommendations;
- (2) the Independent Counsel shall also make such recommendations as he may deem appropriate to the Justices of the Supreme Judicial Court with respect to indications or findings of misconduct, if any, on the part of any employee of the judicial branch; and
- (3) the Independent Counsel shall have, in addition to the usual powers of a Special Master and Commissioner, the power to subpoena witnesses and to administer oaths.

Over the ensuing five months, Independent Counsel and legal professionals at Goodwin Procter LLP (collectively “Independent Counsel”) conducted the administrative inquiry called for in the May 24 order. Independent Counsel interviewed more than two dozen witnesses, took testimony from 67 witnesses under oath, and reviewed more than 525,000 documents collected

¹ A copy of the May 24, 2010 Order accompanies this Report as Exhibit 1.

from the Probation Department and disparate witnesses. Independent Counsel considered all of this evidence in preparing the report that is now presented to the Court.

II. CONCLUSIONS

1. The Hiring and Promotion Process in the Probation Department is Corrupt and Has Disproportionately Favored Politically-Connected Candidates

With limited exceptions based on affirmative action and seniority rules negotiated with the probation officers' union, hiring and promotion decisions in the Probation Department are required to be based on merit, with the most qualified candidate being selected. The *Personnel Policies and Procedures Manual* ("*Policies and Procedure Manual*") for the Trial Court, which is applicable to the Probation Department, is unambiguous:

The successful operation of the Trial Court depends directly on the abilities and contributions of each employee in the organization. Therefore, the objective of the hiring process is to select *the most qualified individuals* who can carry out their responsibilities in a competent and professional manner.

Policies and Procedures Manual, § 4.000 (emphasis added).² Merit hiring is further underscored as the basis for hiring and promotion within the Department as the *Policies and Procedures Manual* states that:

It is the policy of the Trial Court that all appointments be made *solely on the basis of merit*. The practice and appearance of nepotism *or favoritism* in the hiring process are to be avoided.

Policies and Procedures Manual, § 4.304 (emphases added).

Despite these unambiguous requirements, the hiring and promotion process within the Probation Department during Commissioner O'Brien's tenure, and particularly since the

² A copy of relevant excerpts from the Policies and Procedures Manual accompanies this Report as Exhibit 25.

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Commissioner was granted statutory authority with respect to hiring and promotion in 2001, has not been intended to select “the most qualified individual” for each position “solely on the basis of merit.” Instead, hiring and promotion have been thoroughly compromised by a systemic rigging of the interview and selection process in favor of candidates who have political or other personal connections.

To appearances, the Probation Department has an objective hiring process. Candidates for probation officer, for example, are subject to a screening interview conducted by Department representatives by whom the field of candidates is winnowed. A regional round of interviews before two different Department representatives and one judge then selects up to eight candidates for each available position to be given a final interview. The final round interviews are conducted by two Deputy Commissioners or staff designated by Commissioner O’Brien who rank order the finalists. O’Brien appoints the top-ranked candidate(s) to submit to the Administrative Office of the Trial Court (“AOTC”) for approval. At each stage of the process, candidates answer and are scored/ranked on the basis of standardized questions prepared by the Commissioner’s office. Different interviewers sit on each panel, including, at the local level.³ The entire process is intended to create the appearance of a rigorous and objective process designed to identify the most qualified candidates based on individual merit.

That appearance could not be more illusory. Hiring and promotion processes have been fraudulently orchestrated from beginning to end in favor of connected candidates. The fraud begins top with Commissioner O’Brien, and it extends through most of the hierarchy of the Department who participate in interviewing candidates for hiring and promotion, and also

³ The processes described in the Executive Summary have changed over time. The process described in this paragraph has been in place since 2001, when the Commissioner obtained statutory authority over hiring and promotion. The evidence, as discussed in the body of this Report, reflects that the Commissioner was working to rig hiring even before the statutory change in 2001.

involves administrative personnel who help implement a systematic fixing of hiring and promotion decisions.

First Deputy Commissioner Elizabeth Tavares is one of the Deputy Commissioners who is at the heart of perpetrating the sham selection process. Prior to asserting her Fifth Amendment and Article 12 rights not to testify, Tavares testified extensively that, for the preliminary rounds of interviews, Commissioner O'Brien provided her with the names of candidates whom he preselected to advance to subsequent rounds. Tavares communicated the names of favored candidates to Probation Department employees on the local interview panels, who understood that (unless the favored candidates were blatantly unqualified) they were to make sure the favored candidates made the list for the next round, taking the place of more qualified candidates as necessary:

Q. ... So long as somebody was in some sense qualified, even if they really weren't one of the best eight people who interviewed that day, if they got a recommendation, then you should list their name among the top eight?

A. If they were responsive and two committee members agreed, yes.

Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 102.⁴

Regional Supervisors who participated in the screening and local rounds of interviews confirmed Tavares' testimony, and stated that they received names of preferred candidates from others in the Office of the Commissioner of Probation ("OCP"), including Deputy Commissioner Francis Wall, Human Resources Director Janet Mucci, and the Department's legislative liaison Edward Ryan. All testified that they understood that preferred names were chosen by the Commissioner, and that they were instructed to put preferred candidates on the list for the next

⁴ Relevant excerpts of the testimony of First Deputy Commissioner Tavares accompany this Report as Exhibit 137.

round of interviews even if that meant passing over more qualified candidates. In the vast majority of cases, the regional supervisors confirmed that they did as they were told.

Testimony from some of those involved in the preliminary interview rounds concerning the fraudulent interview process illustrates the severity of the problem. Former Deputy Commissioner William Burke, for example, agreed that he advanced any favored candidate who was not “really, really – and I mean really bad”:

- Q. But at the Associate Probation Officer level, when you received a name from the Commissioner’s office, you approved the name, isn’t that correct?
- A. Yeah, if – unless you were – and I’m not making this as a joke against these people – unless you were really, really – and I mean really bad – everybody kind of made the list. I mean, you had to be really bad.
- Q. If you could walk and talk and you had been recommended by the Commissioner’s office for an Associate Probation Officer position, you got approved by Bill Burke?
- A. Yeah.

Testimony of William Burke, July 22, 2010 (Exhibit 96), at 33-34.⁵

Likewise, Regional Supervisor Nilda Rios testified, with respect to screening level interviews for probation officers, that there was no question of refusing to advance a favored candidate:

- Q. How successful would you say you were in putting people onto the next round whose names you had been given by the Commissioner’s office?
- A. I don’t understand the question. I mean, you were told to put a name on; you put the name on.

⁵ Relevant excerpts of the testimony of retired Deputy Commissioner Burke accompany this Report as Exhibit 96.

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Q. So, in every instance where you were given a name, it then made it onto the list of candidates to be advanced to the next round?

A. I believe so.

Testimony of Nilda Rios, August 4, 2010 (Exhibit 130), at 81.⁶

In fact, Rios testified that if the numerical scores of the preferred candidates were not high enough to make them finalists, she and her interview partner (typically Regional Supervisor Frank Campbell) would simply falsify the scores of the Commissioner's candidates to ensure that preferred candidates made the cut:

Q. If you were given names and either you informed your co-interviewer that these were the names to make it through or they were given names on their own, did you discuss at all how you were going to get this person through to the next round?

A. No, you scored all the people and then, if the person didn't score high enough, you gave them a, you know, one or two points, whatever it is, to get them on the list.

* * *

Q. ... If you had an individual whose name you were provided as someone who had to make the list for the next round, and assume you had ten spaces and they were 15th, based on your initial combined scoring, what would you do in order to get them on to the top ten?

A. Just raise their score.

Testimony of Nilda Rios, August 4, 2010 (Exhibit 130), at 94-95, 95-96.

First Deputy Commissioner Tavares and other witnesses further testified that the fraudulent process was also implemented at the final round interviews used to determine who ultimately would fill the open positions. O'Brien gave Tavares the names of the candidates he

⁶ Relevant excerpts of the testimony of Regional Supervisor Rios accompany this Report as Exhibit 130.

wanted to select for the vacant positions to be certain this final interview panel ranked those candidates at the top of the list:

- Q. And so the Commissioner would say, tell Fran Wall that these are the people I want to see get ranked the highest at his review level?
- A. Yeah, take a good look at them, kind of thing.
- Q. And when you say, “take a good look at them,” presumably they’re taking a good look at everybody, right?
- A. Presumably, but I think the folks that are recommended, maybe a more keen eye towards them.
- Q. And it was you understanding that the Commissioner was really intending you to pass along, these are the people that I want to see at the top of the list?
- A. I think so.

Testimony of First Deputy Commissioner Elizabeth Tavares (Exhibit 137), July 13, 2010, at 73-74.

There was, in fact, no doubt concerning the message for the final interview panel. Edward McDermott, a former practicing attorney who is employed in OCP and who sat on final interview panels, testified that the message he was given by Deputy Commissioners Francis Wall and Patricia Walsh when he sat on panels with them was unambiguous – the favored candidates were to be ranked at the top of the list:

- Q. Okay. Tell us what the first instance was.
- A. We were engaged in the process of interviewing the final panel of applicants and at some point, once we’ve started the interviews Deputy Commissioner Wall says to me “And, by the way, the commissioner’s top choice is Joe Jones or Mary Jones.” And I says, “Well, what does that mean?” And he said to me, “That means that that candidate has to get the highest score in the interview.”

* * *

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Q. But describe the process that actually occurred.

A. Either Fran Wall or Patricia Walsh would tell me before the interview or before the candidate, the selected one as they call, or the commissioner's choice, he or she would tell me that this is the candidate that the commissioner wants to score the highest.

Testimony of Edward McDermott, August 25, 2010 (Exhibit 116), at 32-33, 34-35.⁷

According to McDermott, Deputy Commissioner Wall typically waited until after he saw how McDermott had scored candidates so that he could falsify his own scoring in order to ensure that the preferred candidate came out at the top of the list. In fact, the final interview panels scored candidates in pencil, facilitating fraudulent rescoring if necessary.⁸

The result of this sham process was that, contrary to the procedures mandated by the *Policies and Procedures Manual*, candidates were not selected "solely on the basis of merit" and "the most qualified individuals" were commonly passed over for hiring and promotion. The Commissioner ensured that many candidates were selected instead on the basis of their political or other personal connections. Former Deputy Commissioner Burke, and many others, were blunt in admitting that fixing the interviews meant that less qualified candidates were hired or promoted over more qualified candidates:

Q. Well, you know that some people who are less qualified than other candidates got jobs because the Commissioner wanted them to get jobs, isn't that correct?

A. I'd say yeah, yes.

Testimony of William Burke, July 22, 2010 (Exhibit 96), at 75.

The hiring and promotion process within the Probation Department represents a pervasive fraud against the Commonwealth. Having created the pretext of following the

⁷ Relevant excerpts of the testimony of Edward McDermott accompany this Report as Exhibit 116.

⁸ Testimony of Edward McDermott, August 25, 2010 (Exhibit 116), at 53-55.

procedures required by the *Policies and Procedures Manual*, the Commissioner instead awarded valuable positions with substantial salaries and benefits to individuals sponsored primarily by his political allies.

2. The Fraud Is Systemic and Not Episodic

Corruption in the hiring and promotion process at the Probation Department is systemic. When Departmental hiring is authorized (typically following completion of annual appropriations), hundreds of calls on behalf of candidates are received by the Office of the Commissioner. These calls come from individuals in all walks of life, notably state legislators, but also judges, mayors, city councilors, prosecutors and other members of the executive branch. Many candidates for positions have numerous letters of recommendation submitted on their behalf. Some letters of recommendation are based on personal knowledge of the candidate and his or her work experience, though others (particularly from legislators) are form letters.

From these “recommendations,” the Commissioner’s office selects certain contacts to log on spreadsheets known as the “Sponsor Lists.” The Sponsor Lists contain the name of the “sponsor,” the name of the applicant, and the position for which the applicant is applying. The Sponsor Lists are extensive, with some “sponsors” supporting numerous candidates. Two of the legislative liaisons, Maria Walsh and Edward Ryan, produced over 130 pages of Sponsor Lists for the 2004 – 2007 time period.

Although witnesses repeatedly testified that recommendations were received from a broad array of individuals, the great majority of candidates were sponsored by state legislators, with judges and others making up a small minority. For example, on the spreadsheets for fiscal years 1999-2001 all but 13 of the 119 unique sponsors is either a state representative or senator.

The Sponsor Lists, in other words, are not simply lists of recommenders. They are more narrowly a recording of the support being given to candidates by individuals with political sway over the Department.

Tellingly, the individuals tasked with overseeing the creation of the Sponsor Lists have been the Department's "legislative liaisons." These liaisons subsequently obtained the lists of candidates for final interviews to confirm that candidates sponsored principally by members of the legislature – members of the leadership and key committees such as Ways and Means and Judiciary – were advancing as instructed through preliminary rounds of interviews.

This systematic recording and processing of the names of hundreds of candidates sponsored by influential politicians was necessary because fraudulent interviews occurred on a grand scale. Some witnesses advised Independent Counsel that they received the names of preferred candidates for nearly all of the positions for which they interviewed. As a result, most entry level and promotional positions within the Department went to "Commissioner's Choice" candidates:

Q. All right. I understood you to say that the people that get hired or got hired in Probation during the 2005 to 2007 time period were by and large most of the time people who had political recommendations behind them, correct?

A. Yes, correct.

Q. Candidates who had no political connection were unlikely to be hired if there were candidates with political connections, is that fair to say?

A. Yeah, I would say that that was the way it is.

Testimony of Edward Ryan, June 29, 2010 (Exhibit 131), at 99-100.⁹

⁹ Relevant excerpts of the testimony of Edward Ryan accompany this Report as Exhibit 131.

Candidates sponsored by politicians had a remarkable success rate in being hired or receiving promotions. Senator Travaglini appears as the sponsor for 28 candidates on Sponsor Lists we received. Of those, 16 candidates were hired or received promotions, for a success rate of 57.1%. Former Speaker Salvatore DiMasi sponsored 36 candidates, of whom 24 were hired or promoted, for a success rate of 66.7%. Speaker DeLeo appears as a sponsor for 12 candidates, and was successful in having seven of them, 58.4%, hired or promoted.

3. Commissioner O'Brien And Certain Deputy Commissioners Refused to Cooperate in this Investigation

Within days of the appointment of Independent Counsel, Commissioner O'Brien wrote to Independent Counsel and offered his "full cooperation":

I am available to meet and cooperate with your inquiry with any pertinent information and/or documentation that you may find of assistance. I stand ready to cooperate fully in any way to assist your inquiry so that a prompt and thorough report of your findings can be completed as soon as possible to clear my name of the untrue and libelous allegations published by the *Boston Globe*.¹⁰

To assure that Commissioner O'Brien was given an opportunity to present evidence including his views and knowledge of Probation hiring and promotion practices, Independent Counsel called O'Brien (and later his counsel) and offered him an opportunity to present informally such information as he might wish to present. This offer was confirmed in writing by letter to O'Brien's counsel. Despite Independent Counsel's offer to meet, both O'Brien and his counsel repeatedly refused every opportunity to provide information which might give context to the hiring and promotion process implemented by O'Brien, or which might be exculpatory to O'Brien.

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Except as to subpoenaed documents, Commissioner O'Brien refused to cooperate in any way with the investigation, invoking his privileges under the Fifth Amendment to the United States Constitution and Article 12 of the Massachusetts Declaration of Rights. Even with respect to subpoenaed documents, O'Brien refused to testify as to how he went about locating and collecting documents or the decision which documents to produce, and refused to answer questions concerning his compliance with the Court's document retention order. It is thus possible that documents O'Brien considered damaging were withheld and/or destroyed, no contrary assurance having been given by O'Brien nor his counsel despite specific questions from Independent Counsel.

Most of O'Brien's senior management team followed his lead in refusing to cooperate with the investigation, including by refusing to state whether they were in compliance with the Court's document preservation order. This includes current Deputy Commissioner Francis Wall and retired Deputy Commissioner Patricia Walsh, both of whom were identified by persons with first-hand knowledge as central to the fraudulent rigging of final interviews. First Deputy Commissioner Elizabeth Tavares provided testimony early in the investigation, but later refused to testify, invoking her Fifth Amendment and Article 12 rights. While a credible argument exists that Tavares waived any privilege by testifying initially and only later asserting her 5th Amendment and Article 12 rights, Independent Counsel elected not to move to compel her testimony.

Two key legislators involved in budgeting for Probation and who sponsored candidates for hiring and promotion also refused to cooperate with the investigation, former Speaker of the

¹⁰ A copy of the May 28, 2010 letter from O'Brien to Independent Counsel accompanies this Report as Exhibit 17.

House Thomas Finneran and Representative Thomas Petrolati, both of whom invoked their Fifth Amendment and Article 12 rights and refused to testify.

Notwithstanding Commissioner O'Brien's refusal to cooperate with the investigation, the evidence is overwhelming that he encouraged extensive falsification of interview results at all levels of Probation. O'Brien's refusal supports an inference that the testimony of the many witnesses who did cooperate is accurate. That evidence alone is sufficient for the Court to take such actions against Commissioner O'Brien, including removal from his position and further sanctions, as the Court may determine. AOTC may conclude that Commissioner O'Brien is no longer qualified to lead the Probation Department. The same conclusion applies with equal force to Deputy Commissioners Wall and Tavares.

4. Commissioner O'Brien Retaliated Against Employees Who Refused to Execute the Fraud

On some occasions, interviewers who failed to pass preferred candidates through the preliminary rounds of interviews were the subject of retaliation. Regional Supervisor Ellen Slaney, for example, testified that early in Commissioner O'Brien's tenure she refused to advance one candidate (a state senator's son) to the next round of interviews because he was a convicted felon. In response, O'Brien became angry and told her that if she did not go along with the rigged process, she would be removed from interviewing for openings in her own region, which is in fact what happened:

- Q. As best you can recall, what conversation did you have with the Commissioner concerning this round of hiring?
- A. He was – seemed physically upset with me. When I went in, I got called into his office, and he wanted to know why I hadn't put Doug Maclean's name on the final list.

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- Q. And what did you say in response?
- A. That I didn't think he was an appropriate candidate because he was a convicted felon and that I thought my position was one to make sure the best candidates got the job, and I didn't think he was the best candidate or an appropriate candidate.
- Q. What was said next in this conversation, as best you can recall?
- A. ... And I told him that I thought that having the names ahead of time was unethical, and I felt that it was cheating and that I couldn't do that. And he eventually told me that he understood and that he would not insist that I continue to be on the hiring panels if I did not want to do it, and I said I did not.

Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 18-19.¹¹

Other witnesses, including former First Deputy Commissioner John Cremens, confirmed these events. Furthermore, in messages left by Human Resources Director Janet Mucci on Regional Supervisor Edward Dalton's answering machine in October 2000, Mucci states Commissioner O'Brien told her "... if people were real uncomfortable with this" rigging of interviews, "he's going to have to remove people from doing interviews."¹²

In 2005, two regional supervisors who failed to advance preferred candidates (Slaney and Dalton) were pulled aside after a staff meeting by Deputy Commissioner Francis Wall and former Deputy Commissioner Patricia Walsh. Wall and Walsh informed Slaney and Dalton that they were being removed from interviewing within their own regions and instead were reassigned to perform case "audits" far from their homes and geographic regions. This was broadly understood as punishment for their failure to advance preferred candidates.

¹¹ Relevant excerpts of the testimony of Regional Supervisor Slaney accompany this Report as Exhibit 135.

¹² A copy of the transcript of these voicemail recordings accompanies this Report as Exhibit 31.

Others within the Department testified that, fearing similar retaliation, they continued to comply with their instructions to fix the hiring and promotion process despite knowing it was wrong. For example, one of the many such individuals stated:

- Q. Can you tell me why you felt you had to comply with selecting, if you will, the commissioner's choice as opposed to your saying this is a rigged process, I'm not going to participate in that?
- A. Quite frankly, because I was afraid for my job. And if I can interject, I had also heard that regional supervisor Ellen Slaney had failed to comply with a request and that she was brought into the office, berated and threatened, and that was not lost on me. And I was three or four years into the probation service at 52 years of age or whatever and I felt that if I didn't comply with a directive by my supervisor, that I might be in harm's way.
- Q. So in effect you felt compelled to go along with this scheme because you felt there would be sanctions if you didn't score the commissioner's choice more highly than he deserved?
- A. I'm not very proud of it, but yes.

Testimony of Edward McDermott, August 25, 2010 (Exhibit 116), at 37-38.

5. Deputy Commissioners Were Complicit in O'Brien's Fraud

As described above, senior management for the Probation Department, including all of the Deputy Commissioners, were involved in implementing a system of fraudulent hiring and promotion in favor of politically-connected candidates pre-selected by the Commissioner. Each of these Deputies acted knowingly, in breach of their fiduciary duties to the Probation Department and in breach of the express provisions of the *Personnel Practices and Procedures Manual*.

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First Deputy Commissioner Elizabeth Tavares was central to the process, admitting that she received names of favored candidates from the Commissioner and funneled them to other Deputy Commissioners and regional supervisors in order to ensure that the Commissioner's candidates received final round interviews. While Deputy Commissioner Francis Wall and former Deputy Commissioner Patricia Walsh invoked their Fifth Amendment and Article 12 rights not to testify, numerous witnesses testified that Wall and Walsh regularly provided names of preferred candidates and received names of candidates whom they ranked and scored. Current Deputy Commissioners Steven Bocko and Paul Lucci, as well as retired Deputy Commissioners John Cremens and William Burke, also admitted to participating in fraudulent hiring and promotion practices. All bear some responsibility for the wider fraud inspired by O'Brien.

In addition, it is clear that the two Deputy Commissioners who served as Legal Counsel to the Department during this period – former Deputy Commissioner Anthony Sicuso and Deputy Commissioner Christopher Bulger – either were aware of the wrongdoing within the Department and failed to report it, or had substantial reason to believe that the wrongdoing was occurring and chose to ignore it. Bulger, for instance, admitted during his testimony that he “assumed” that the interview process was being rigged in favor of connected candidates:

- Q. You know, do you not, that it was a routine practice in the office to communicate names of preferred candidates ... to interview panelists at the regional level prior to those interviews ...?
- A. I understand that to be the case now that it was routine practice. Prior to the [*Boston Globe*] article, I assumed it occurred anyway. I assumed it happened anyway

Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 44.¹³

¹³ Relevant excerpts of the testimony of Deputy Commissioner Christopher Bulger accompany this Report as Exhibit 95.

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In light of the near universal involvement of high-ranking OCP personnel in the fraud – from the Commissioner down to administrative personnel – Independent Counsel concludes that the testimony by Bulger that he only “assumed” a sham process but lacked actual knowledge cannot be credited. Similarly, Sicuso’s disclaimer of any knowledge is not credible. It is potentially a breach of ethical obligations under Rule 1.13 of the Massachusetts Rules of Professional Conduct, and certainly poor judgment, for Legal Counsel to the Department not to take steps to investigate and report suspected wrongdoing within the Department of which either was aware. The dishonest or incompetent oversight by Legal Counsel in monitoring and ensuring the Department’s compliance with legal obligations facilitated the fraudulent hiring scheme.

It is clear that Bulger’s foremost loyalty even today lies with Commissioner O’Brien, not the Probation Department. When O’Brien was initially told of his suspension, Bulger sought to participate in the suspension meeting, apparently as counsel for O’Brien. More tellingly, Bulger conceded during his testimony that he has been informing Commissioner O’Brien “two or three times a week” of developments in this investigation:

- Q. What’s the purpose of your discussions with Commissioner O’Brien –
- A. Just –
- Q. – since his suspension?
- A. The purpose now is to just go over the events that are taking place in our office.
- Q. What events are you talking about?
- A. The investigation.
- Q. Are you saying that you keep Commissioner O’Brien posted on what you know about the investigation?

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A. If I hear of something, I will tell him, yeah.

Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 38-39. Bulger told Independent Counsel that he wanted to keep O'Brien informed precisely because he viewed O'Brien as "the target of this investigation":

Q. What exactly have you discussed with Commissioner O'Brien in the two or three conversations a week since May, 2010?

A. What have we discussed? Oh, we've discussed the articles and subsequent articles and -- we've discussed individuals that were being called down to testify, who might be called and --

Q. In short, you were informing Commissioner O'Brien of who within probation had been called to testify here?

A. I've told him who -- if I knew of someone, I would mention that to him.

Q. Well, you knew because you were given a handful of subpoenas for probation employees; isn't that correct?

A. Um, yes. I did get a handful of them, yea.

Q. And did you inform Commissioner O'Brien of the witnesses that had been called?

A. Ones that I knew, I would mention who was -- who had gone down.

Q. Why did you do that?

A. I don't know. I thought he should know.

Q. Why did you feel he should know?

A. Because he's -- I imagine he's the target of this investigation.

Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 63-64.

It is incomprehensible that Counsel to the Department, bearing in mind his fiduciary and ethical obligations, was almost daily apprising a suspended Commissioner and the principal

subject of this investigation of the course of the investigation and discussing with him witness testimony of which he had become aware in his capacity as Probation Legal Counsel.

Bulger also revealed during his testimony that he is effectively of one mind with Commissioner O'Brien that manipulating hiring and promotion is acceptable at some level because, to paraphrase, "everyone does it":

Q. Have you talked with the commissioner at all with respect to hiring practices?

A. Um, I did. I –

Q. What did he say and what did you say?

A. Um, my understanding is that, you know, I think he would say, yeah, there were phone calls made to him from all walks. And our view is that – I mean, I guess I share his view that it happens in a lot of agencies. So I guess it was, you know – that's what we would discuss. That this is something that happens everywhere to some degree.

Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 39-40.

To the extent Bulger's credibility may be relevant to the Court, Independent Counsel observed Bulger to be consistently evasive and untruthful in responding to questions under oath. He made repeated attempts to deflect the questioning. Many of his answers were blatantly false in the view of Independent Counsel (*see, infra*. ¶¶ 550-562).

Bulger's role as counsel to the Department has been irrevocably compromised by his misplaced loyalty, not only to Commissioner O'Brien but to business-as-usual in Probation. Bulger remains an advocate for the "return" of Commissioner O'Brien whom he praised as a "great Commissioner" and "a man of integrity."¹⁴

¹⁴ Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 141-142.

6. Legislative Quid Pro Quo for Fraudulent Hiring and Promotion

The evidence demonstrates that an understanding existed among certain legislators and O'Brien that generous appropriations for the Probation Department were linked to O'Brien's willingness to perpetuate and systematize fraudulent hiring and promotion on a pervasive scale. O'Brien was appointed in December 1997. At least by 2000, a rigged process was in place by which O'Brien saw to the hiring of politically anointed candidates and in return legislators saw to it that Probation's budget increased at a steady rate., even beyond that requested by AOTC. The following recorded voicemail from the Probation Department's Human Resources Director, Janet Mucci, to a regional supervisor *at his home* instructing him that his recommendations must include certain favored candidates is illustrative:

I know you are not doing interviews today but in Dedham there are people that have to be finalists ... Jack had given me, one, two, three, four, like 7 names to be interviewed.

* * *

I've got some names for finalists in the Dedham District Court ... can you just make sure they're in there somewhere ... so now that I just beefed you up a little bit, you gotta do this... there's one, two, three, four, five, there's 6 people to be finalists in Falmouth... he had a meeting at the State House yesterday and he has no choice.

* * *

Falmouth's going to be tough because there is about, I think there's 5 or 6 finalists and that out of eight is crazy. But Jack had had a meeting over at the State House yesterday... and again that triggered a lot of this. You know [*whispering*] when he got everything he wanted this year in the budget moneywise, so they feel like they did that for him ...and obviously he needs to do this for them.¹⁵

¹⁵ Voicemail recordings (Exhibit 31).

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Mucci confirmed that her information came directly from O'Brien after having previously denied communicating any names during an informal interview and under oath in her first appearance before Independent Counsel:

- Q. So you're saying to Mr. Dalton here that because Mr. O'Brien got what he wanted in the budget that he therefore has to be sure these candidates make the final list, correct?
- A. Yeah. That's definitely what I'm saying.
- Q. And you're not saying that because you made it up, are you?
- A. No. Because I would have no reason to – I wouldn't know anything about anything going on at the State House if he didn't tell me it. I can't imagine why he would share that with me.
- Q. Does it follow that you got this information directly from Mr. O'Brien?
- A. It had to be, yeah. Because I don't know who else he would even go with.

Testimony of Janet Mucci, October 5, 2010 (Exhibit 121), at 180.¹⁶

Regional Supervisor Ellen Slaney similarly testified that during this same period, shortly after O'Brien became Commissioner, he told her that it was necessary for budgetary reasons to fix the hiring process in favor of legislatively supported candidates:

- Q. What was said next in this conversation, as best you can recall?
- A. Well, you know, I also indicated to him that I understood that this was just my perception and that he had other things to consider. He said he did, that the budget was important and that these appointments were important to his being able to accomplish the budget that he needed in order to do our business.

Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 19.

Former Deputy Commissioner William Burke, an ally of Speaker pro tem Thomas Petrolati and other politicians from western Massachusetts, also testified to his understanding that the hiring and promotion process was manipulated by the Commissioner in exchange for favorable legislative action on the Department's funding:

Q. You understood, didn't you, that while it wasn't written down, the legislature was funding Probation generously because Probation was responding to legislative requests for hiring, among other things, isn't that correct?

A. I'd say yeah.

* * *

Q. The way in which it worked was one hand, you know, washed the other?

A. Washes the other. Yeah, I know. I know what you're talking about.

Q. And the way it worked particularly with Probation was Mr. O'Brien would get his funding, and the legislature would get some jobs, isn't that right?

A. Yeah, I would say so, yeah.

Testimony of William Burke, July 22, 2010 (Exhibit 96), at 79, 82-83.

Underscoring the quid pro quo nature of the arrangement, one of the legislative liaisons tasked with helping create the Sponsor Lists testified that the legislators with the greatest sway were those in leadership positions or seats on the Ways and Means and Judiciary Committees:

Q. Was there an understanding within the Probation Office that certain politicians were to have more clout in the hiring process than others?

A. Yes.

Q. And what was the hierarchy in terms of preferences given to candidates sponsored by politicians?

¹⁶ Relevant excerpts of the testimony of Janet Mucci accompany this Report as Exhibit 121.

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A. I think the leadership would have more say, and I also -- I would say, yeah, I would say the leadership would be able to carry more weight with the Commissioner.

Q. During the period in which you were involved in these preferential lists, what was the leadership to which you're referring?

A. The Senate president, Senate Ways and Means.

* * *

Q. On the House side, what was the leadership to which you refer?

A. The House side was, when I came in, Speaker DiMasi. House Ways and Means was the now-Speaker DeLeo. The chair of the judiciary was, is Gene O'Flaherty

Testimony of Edward Ryan, July 15, 2010 (Exhibit 131), at 153-54, 164.

The sponsor lists reflect the greater influence of legislators in leadership or on important committees. The list of the ten most-frequent "sponsors" includes influential legislators: former Speaker of the House Salvatore DiMasi; Senate President Robert Travaglini; Senators Steven Panagiotakis, Stephen Brewer, John Hart, and Marc Pacheco (all on Senate Ways and Means); Senator Mark Montigny, previously chairman of Senate Ways and Means; Senator Thomas McGee and former Senator Robert Creedon, on the Senate Judiciary Committee; and Representative Stephen Tobin of Quincy (where Commissioner O'Brien resides), who previously was on the House Judiciary and Ways and Means Committees.¹⁷

Six of these ten legislators – DiMasi, Travaglini, Montigny, Hart, Pacheco, and Brewer – along with Speaker Robert DeLeo and Petrolati also appear on a list of the twenty most-frequent

¹⁷ Representative Thomas Petrolati is not among the ten legislators most frequently listed on the Sponsor Lists, but former Deputy Commissioner Burke testified that he sometimes received calls with the names of favored candidates for positions in western Massachusetts from Petrolati directly, and acted on them without going through the Commissioner. That, plus additional evidence, suggests that Petrolati's involvement in patronage hiring within Probation is far greater than the Sponsor Lists demonstrate.

recipients of contributions from Probation Department employees since 2000. Independent Counsel did not uncover direct evidence that legislators were explicitly offering to sponsor candidates in exchange for campaign contributions, but there is statistical evidence that “pay for play” was the reality. Of the 54 candidates sponsored by Senator Montigny, for example, at least 23, or 42.6%, were contributors to the Senator. Of the 23 contributors, 11 were successful in being hired or promoted within a year following the sponsorship (47.8%). By contrast, of the 31 non-contributors, only 1 (3%) was hired or promoted. Of the 28 candidates sponsored by Senator Travaglini, 10, or 35.7%, were contributors. Nine of these ten of these (90%) were hired or promoted within Probation within a year following their sponsorship, whereas non-contributors had “only” a 39% success rate (7/18). Altogether, for the group of legislators most frequently appearing on the Sponsor Lists plus DeLeo and Petrolati, their sponsored contributors had a 62.2% success rate (61/98) for being hired or promoted within a year of being sponsored, while their sponsored non-contributors only had a 25% success rate (55/220).

The evidence demonstrates that Commissioner O’Brien went to extraordinary lengths to placate “important” politicians by ensuring the success of their preferred candidates. For example, O’Brien told Senator Marc Pacheco in 2005 that either he would successfully fill a first assistant chief probation officer position with the Senator’s preferred candidate, or he would not fill it at all. The preferred candidate in question, who did receive the promotion, testified that Senator Pacheco relayed this incident to him:

- Q. In 2005, when you were applying for the first assistant chief position, did Senator Pacheco relay to you that the commissioner had told him that if you didn’t get the position then the commissioner would just freeze the position and wouldn’t fill it?
- A. I believe he did.

Q. As best you can recall, what exactly did Senator Pacheco tell you?

A. He supported me for the first assistant chief's job and that if I did not receive the position, the commissioner would freeze the position.

Testimony of Joseph Dooley, September 17, 2010 (Exhibit 106), at 37-38.¹⁸

7. Fraudulent Hiring and Promotion May Constitute Criminal Conduct

There is credible legal support for the conclusion that the fixing by public officials of a putatively objective interview process for hiring and promotions in favor of politically-connected applicants constitutes criminal conduct in violation of federal fraud statutes. *United States v. Sorich*, 523 F.3d 702 (7th Cir. 2008) is an analogous case which involved the federal mail fraud convictions of three former employees of the Chicago Office of Intergovernmental Affairs who had orchestrated a pervasive and long-running political patronage scheme.¹⁹ Like Commissioner O'Brien, defendant Sorich received the names of favored campaign workers and volunteers who were seeking civil service jobs. Like Commissioner O'Brien, Sorich maintained documents tracking job applicants and their sponsors, including a spreadsheet showing thousands of patronage applicants and their sponsors over a seven-year span. Like Commissioner O'Brien, Sorich forwarded the names of favored candidates to the heads of various city departments for jobs. As here, departmental managers who had been provided with favored names conducted sham interviews in which the favored candidates had their scores artificially inflated.

¹⁸ Relevant excerpts of the testimony of Chief Probation Officer Dooley accompany this Report as Exhibit 106. In contemporaneous notes from 2005, Regional Supervisor Ellen Slaney recorded Dooley relaying this story to her. A copy of Ellen Slaney's notes, marked during her testimony as Exhibit 5, accompany this Report as Exhibit 135.

¹⁹ A copy of the Seventh Circuit's opinion in *Sorich* accompanies this Report as Exhibit 16.

The Seventh Circuit upheld the fraud convictions of Sorich and the department managers against an insufficiency of the evidence challenge for reasons applicable here. The court explained that “by setting up a false hiring bureaucracy, the defendants arguably cheated the city out of hundreds of millions of dollars.” *Id.* at 712. It rejected the defendants’ argument that since the city would have filled these jobs and paid these salaries anyway, it did not suffer a loss of property, explaining:

[H]ere the city paid for, and was cheated out of, qualified civil servants. Jobs are a lot like contracts. Neither is a bag full of money but both are immensely valuable: a contract is a promise to pay for services rendered, while a job is the exchange of labor for a paycheck. Hence just as [f]raudulently obtained contracts are property, courts have held that *salaries fraudulently obtained, and job opportunities fraudulently denied, represent property for purposes of mail fraud.*

Id. at 713 (internal citations omitted) (emphasis added).²⁰ The court further noted that the use of the mail to send letters to unsuccessful applicants (a practice shared by Probation) lent a false air of propriety and regularity to the rigged hiring process. *Id.* at 714.

The *Practices and Procedures Manual* requires the Probation Department to select the most qualified candidates based solely on merit. Commissioner O’Brien and his subordinates involved in interviewing did not do that, but in many cases awarded positions and promotions to individuals who were merely the most connected. As in *Sorich*, the mails and wires were used to carry out this fraud, by which the Commonwealth was deprived of substantial money, including

²⁰ Other courts have also upheld the application of the mail fraud theory to rigged employment decisions and/or fraudulently obtained positions. *See, e.g., United States v. Douglas*, 398 F.3d 407, 417-18 (6th Cir. 2005) (upholding mail fraud claim for scheme to deprive union members of rights to compete for jobs); *United States v. Granberry*, 908 F.2d 278, 280 (8th Cir. 1990) (employee who falsified government job application obtained money or property by scheme to defraud, since wages are money within §1341); *United States v. Doherty*, 867 F.2d 47, 55-57(1st Cir. 1989) (upholding §1341 conviction for stealing and selling police promotion exams because increased salary and benefits involved taking of money or property from city).

salaries and benefits paid to Department personnel who were fraudulently provided jobs and promotions, and the expense of the false hiring process.

In addition to potential violations of federal law, the conduct of Probation Department employees in connection with hiring and promotions may also have been in violation of state law. *See, e.g.*, Mass. Gen. Laws c. 268A, § 1 et seq. (conflict of interest laws and regulations regarding conduct of public employees); Mass. Gen. Laws c. 274, § 7 (conspiracy). These state laws include the bribery statute, which may have been violated by O'Brien offering a "[t]hing of value" – positions in the Probation Department for relatives, friends, and supporters – to state legislators, with the intention of influencing their "official acts" on matters important to Probation – such as appropriations for the Department. M.G.L. c. 268A, §2(a). Conversely, O'Brien also may have violated the bribery statute by asking for a "[t]hing of value" for himself and the Department – increased appropriations, expanding the scope of O'Brien's domain – in exchange for his being influenced with respect to his "official acts" – appointing persons to positions within the Department. M.G.L. c. 268A, §2(b).

Former Deputy Commissioner and Legal Counsel Anthony Sicuso underscored the impropriety and illegality of the hiring practices within the Probation Department:

- Q. If as legal counsel you had received credible information that interviewers at either the local panel round or the final round of interviews were receiving names of candidates that they were supposed to favor and score more highly than those candidates deserved on the merits, what would your response have been?
- A. The first thing I would have done is gone to the commissioner, and second thing probably go to Paul Edgar.
- Q. For what purpose?
- A. To have full disclosure of it.
- Q. Would there be, as legal counsel --

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- A. Then to let the Trial Court do what it felt was appropriate.
- Q. Would you have seen any legal implications of that kind of practice occurring?
- A. What do you mean?
- Q. So there is -- you have a contract with the union governing hiring and promotions in some sense. You have the administrative office's practices and procedures manual. If you had been made aware of that practice at the time, were there any concerns that you would have about potential legal liability for the department?
- A. Of course.
- Q. I guess what I'm trying to get at what are the potential avenues of liability for the department if such practices were occurring?
- A. Depending on the situation there are possible criminal issues, possible MCAD issues depending on who was involved.

Testimony of Anthony Sicuso, September 30, 2010 (Exhibit 134), at 90-91.²¹

Independent Counsel recommends that the Massachusetts Attorney General and the United States Attorney be made aware of the findings in this report concerning hiring and promotion so that they may decide what action, if any, should be taken as a law enforcement matter. Potential targets of a criminal investigation include Commissioner O'Brien, Francis Wall, Patricia Walsh, William Burke, Elizabeth Tavares, and Christopher Bulger.

²¹ Relevant excerpts of the testimony of former Deputy Commissioner/Legal Counsel Sicuso accompany this Report as Exhibit 134.

8. Probation Department Personnel Were Solicited by Probation Management for Political Contributions in Violation of State Campaign Finance Laws

Massachusetts law is clear that except under limited circumstances, state employees may not solicit or receive contributions for political campaigns, nor may solicitation or receipt of campaign contributions be conducted by anyone on state government property. M.G.L. c. 55, §§ 13, 14.²² A violation of either section is a criminal act punishable by up to a year in prison and a fine of up to \$1000, and any state employee convicted of violating either section may be removed from office without a hearing. These strictures were violated on multiple occasions by high-ranking personnel within the Department, including Commissioner O'Brien and Deputy Commissioner Francis Wall.

The *Globe* Spotlight story reported that numerous Probation Department employees donating to the campaign of Treasurer Tim Cahill shortly before Commissioner O'Brien's wife was hired by the Treasury Department. Independent Counsel confirmed that in July 2005, Commissioner O'Brien and/or Edward Ryan, his "legislative liaison," at O'Brien's request, solicited Probation Department employees in the cafeteria at One Ashburton Place to donate to Treasurer Cahill's campaign.²³ Deputy Commissioner Fran Wall also solicited Department employees to attend this fundraiser. In response to these solicitations, dozens of Probation Department personnel attended the fundraiser on behalf of Cahill. It appears that 34 members of the Department contributed an even \$4,000 to Cahill on a single day, July 6, 2005. Strikingly, 28 of those 34 gave to Cahill only on this one occasion.

²² Copies of these statutes are appended to this Report as Exhibits 10 and 11.

²³ Ryan confirmed generally that he would "talk up" Cahill fundraisers to his fellow Probation Department employees.

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Several witnesses recalled Commissioner O'Brien and Deputy Commissioner Wall soliciting contributions on behalf of Representative Thomas Petrolati in the cafeteria at One Ashburton Place. Former First Deputy Commissioner John Cremens had a clear memory of this:

Q. So you remember – do you have a firm memory of Commissioner O'Brien doing that?

A. I remember Commissioner O'Brien saying on one occasion, there's going to be a party, at someone's table, for Tommy Petrolati. I said, oh, no I'll go, no problem.

* * *

Q. Was the goal to get a bunch of Probation Officers together to all go as a group or –

A. Well, I know that in my situation I gave my money to Frannie Wall who was going to get the tickets for us

Q. Who is this for, Petrolati?

A. Petrolati.

Testimony of John Cremens, August 6, 2010 (Exhibit 102), at 86-89.²⁴

According to one regional supervisor, the pitch being made by Wall explicitly linked attendance at the fundraiser to Petrolati's assistance to the Department on budget matters:

Q. Going back to the political fundraiser for Mr. Petrolati, who was kind of the person who marshaled folks together or said, hey, we should –

A. The only one I recall -- and I only went to maybe one; I can't even recall if I went to another one; I just stopped going -- would have been Frannie Wall at the time, "We're going out to see Representative Petrolati. Why don't we all get together and go out and support him? Because he's helping us try to get the funding for the jobs, for the program."

Testimony of Edward Rideout, August 27, 2010 (Exhibit 129), at 144-45.²⁵

²⁴ Relevant excerpts of the testimony of former Deputy Commissioner Cremens accompany this Report as Exhibit 102.

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In addition, one chief probation officer testified that his friend, Senator Marc Pacheco, asked him on more than one occasion to solicit contributions from among his fellow Probation Department employees, and he did so:

- Q. Senator Pacheco asks you to help him sell tickets --
- A. In the past he's asked me if I could take tickets to sell to friends.
- Q. Has he ever specifically asked you to see if anyone else in the Probation Department would be interested in attending?
- A. Yes.

Testimony of Joseph Dooley, September 17, 2010 (Exhibit 106), at 49-50.

These violations of campaign finance laws by state employees and on state property are the more troubling given the politicization of hiring and promotion decisions within the Department. One can reasonably infer considerable pressure on employees to give to the key politicians favored by their superiors, believing that these same politicians wield potentially decisive influence on promotional opportunities. One regional supervisor testified that he felt pressure to attend the Petrolati fundraiser to which Deputy Commissioner Wall invited him, knowing that Commissioner O'Brien and others in the hierarchy would be there. The former head of the probation officers' union and another regional supervisor testified that probation officers told them that they felt they had to contribute to politicians to get promoted.

The statute of limitations has not yet run on some of these incidents. Independent Counsel recommends that the issue of campaign finance violations be referred to the Attorney General and/or the Suffolk County District Attorney.

²⁵ Relevant excerpts of the testimony of former Regional Supervisor Rideout accompany this Report as Exhibit 129.

9. O'Brien Solicited Political Contributions to Treasurer Cahill to Assure His Wife's Being Hired by Treasury

In July 2005, Commissioner O'Brien or Edward Ryan, on his behalf, solicited attendance by Probation Department personnel at a fundraiser for Treasurer Cahill in the cafeteria at One Ashburton Place. Other Probation Department employees testified that they were approached by Deputy Commissioner Francis Wall and asked to attend. Nearly three dozen probation department employees, a vast majority of whom never gave to Cahill on any other occasion, did so.

At the time, Commissioner O'Brien's wife, Laurie O'Brien (who also contributed to Cahill on July 6), had a pending application for employment in the Department of the Treasury. Emails within Treasury reveal that, only five days before the fundraiser, Laurie O'Brien's application came up for discussion. Treasury was considering her for a night-shift computer operator position, which was described as undesirable and difficult to fill. Seven days after the fundraiser, Laurie O'Brien's application was again discussed within Treasury, but this time she was "considered" for a far more desirable position in customer service. Contemporaneously, Edward Ryan, who had known Cahill since childhood, called contacts within Treasury on Laurie O'Brien's behalf.

Individuals within the Treasury Department testified that Laurie O'Brien was not hired as a result of the fundraising on behalf of Cahill or as a result of Ryan's calls. They also testified that Cahill was not directly involved in the initial decision to offer a position to Laurie O'Brien though he later approved the hire. Because this investigation is not focused on alleged wrongdoing within the Treasury, Independent Counsel did not pursue nor fully investigate the facts surrounding the two O'Brien hires at Treasury.

However, Independent Counsel does conclude that Commissioner O'Brien, either directly or through his subordinates Wall and Ryan, solicited contributions to Cahill from his employees in the Probation Department for the purpose of assisting his wife in obtaining a desirable position within Treasury. This was an apparent violation of the law and an abuse of O'Brien's position of authority within the Probation Department for personal gain.

10. Probation Management May Have Testified Falsely in Grievance Proceedings

On some occasions, candidates passed over for promotion, including those rejected in favor of preferred candidates, filed grievances concerning the promotion process, some of which resulted in arbitration. Independent Counsel believes that Deputy Commissioners Francis Wall and Patricia Walsh testifying in those arbitration proceedings may have perjured themselves concerning the fraudulent promotion system by claiming promotions were merit based.

In particular, during the arbitration proceedings the members of the final interview panel ordinarily were called to testify. The arbitrators' decisions from these proceedings typically recount that final interview panel members' ranking of the candidates was based on the interviewers' consideration of the candidates' answers to interview questions and the candidates' application materials.

Independent Counsel reviewed thirty-eight arbitration files, and in none of them did a final interview panel member (usually Wall and Walsh) ever disclose that the scoring of a candidate was based on receipt of that candidate's name from Commissioner O'Brien or one of his deputies. In fact, in at least two arbitration cases, Deputy Commissioners Wall and Walsh explicitly denied receiving any names, as noted in the arbitrators' decisions:

They asked each candidate the same four questions, each of which was worth 5 points, and independently scored the responses using a scoring key prepared by the OCP. *According to both Wall and Walsh, no one from OCP expressed a preference for any of the candidates.*

* * *

Both deputies testified that they had reviewed the materials the applicants had submitted prior to the interviews. *They also said that no one had spoken to them one way or the other about any candidate*²⁶

It is certainly possible that this sworn testimony was truthful, at least with respect to these specific cases. However, witnesses consistently testified that preferred names were handed down for most of the promotional positions for which probation officer union members applied. Independent Counsel believes that it is statistically unlikely that in the thirty-eight cases for which we have arbitration files, no names were communicated as to any candidate who was subsequently relevant to the arbitration. It is probable that on at least some occasions, the final interview panel members falsely described the basis for their decisions without any reference to the Commissioner's expression of a preference for a particular candidate, and/or falsely denied receiving names from OCP.

The potential seriousness of such conduct requires that arbitration testimony be reviewed by appropriate authorities with the resources to do so.

11. Fraudulent Hiring And Promotion Has Severe Consequences for the Department

To be clear, some of those hired or promoted as a result of the rigged process would and should have been hired or promoted on their own merits. Many applicants hired on the basis of

²⁶ A copy of relevant arbitration decisions accompany this Report as Exhibits 8 and 9.

their connections turned out to be professional and competent in their positions. Nonetheless, the fraudulent process has presented, and will continue to present, severe consequences for the Department.

First, the process is unfair to many qualified candidates who, but for the rigged system, could have advanced to subsequent rounds of interviews, and to those qualified candidates who were passed over at the final round in favor of connected candidates. These candidates were the most direct victims of a corrupt process and were defrauded by O'Brien and Deputy Commissioners Wall, Walsh and Tavares, the Regional Supervisors, and other interviewers who reported to O'Brien. There is evidence that other highly qualified candidates, resigned to the existence of the fraudulent process, never even applied for open promotional positions.

Second, the process led in some instances to the hiring of candidates who never should have been hired. As one example, a state senator's son with a felony narcotics record repeatedly was identified to interviewers as a preferred candidate who was ultimately hired. He eventually relapsed into drug use and left the department.

Third, the hiring and promotion process wasted substantial Probation Department and judicial resources, not to mention the time of applicants. The multiple rounds of interviews diverted judges and Department personnel from productive and important public responsibilities. In many cases, interviews were a vacant ritual given that the outcome was predetermined by O'Brien. Public money in the form of salaries and benefits were also obtained by individuals who were not the most qualified and who therefore should not have been employed or promoted.

Fourth, the fraudulent process potentially implicates public safety and the rehabilitation of probationers. The Probation Department is responsible for ensuring that, as best as can be achieved, the public is protected from defendants now on probation. The ostensible goal of the

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hiring and promotion process is to determine the most qualified candidates to perform this public safety service. It is clear that in many cases unqualified candidates were hired and promoted.

The extent to which this compromised the ability of the Department to ensure public safety and to rehabilitate probationers cannot reasonably be estimated.

Fifth, the fraudulent process seriously damaged morale within the Department. Aware that promotions were rigged, the morale of qualified employees who were repeatedly passed over for promotion (whether on the merits or not) was measurably undercut. Moreover, many of those who were enlisted in committing fraud, who otherwise have had decades-long, honorable careers in Probation, are now at risk for having perpetuated O'Brien's fraud.

Sixth, the fraud has opened the Department to potential legal liability. Candidates passed over for hiring and promotion, particularly those who grieved and arbitrated promotion decisions, may have causes of action against the Department, especially in cases in which perjury may have been committed during arbitration proceedings. During their testimony, some interviewers were able to identify specific individuals who would have made the list of finalists but for the order to place a sponsored candidate on the list. Independent Counsel has not fully explored this consequence, but the amounts in question could be substantial.

Finally, a corrupt process casts doubt on the integrity of the Department as a whole, including the many hardworking and honest Probation Department personnel who either had no knowledge of this system, or were aware of it but felt that had to comply with instructions from the Commissioner or risk retaliation.

12. Changes in Process Can Limit Risk Of Fraudulent Conduct

Commissioner O'Brien had the power to appoint individuals to positions within the Department. Nonetheless, he was required to seek approval for each appointment from AOTC. Independent Counsel believes that AOTC has the authority to take a more interventionist role in ensuring that hiring within the Probation Department is based on merit and, in doing so, curb any future attempt to implement a fraudulent process.

The evidence indicates that as early as 2000, AOTC was aware that there were significant and fundamental problems with the Probation Department's hiring practices. Chief Justice for Administration and Management Barbara Dortch-Okara knew that O'Brien was providing names of "recommended" candidates to the local interview panels and was attempting to improperly influence the hiring process. Chief Justice Dortch-Okara took meaningful steps to address these problems, but before permanent changes could be fully implemented, a hiring freeze in 2001 mooted the effort.

When hiring resumed in 2004, the evidence indicates that certain judges involved in the interview process were aware that Probation employees on the panels were being given names of preferred candidates to pass to final interview rounds.²⁷ Some even called Commissioner O'Brien to complain about preferred candidates.²⁸ Though he testified he had no "direct evidence," Chief Justice Robert Mulligan believed that the hiring process for Probation Department employees was "dishonest" and that the Commissioner, either directly or through others, was fixing the process so that Commissioner's choice candidates could be hired.

²⁷ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 75, 136, 204-205; Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 52-53, 63-64, 85; Testimony of Richard O'Neil, August 3, 2010 (Exhibit 124), at 32-34, 36. Relevant excerpts of the testimony of former Regional Supervisor Dalton accompany this Report as Exhibit 103. Relevant excerpts of the testimony of Regional Supervisor O'Neil accompany this Report as Exhibit 124.

²⁸ Testimony of Richard O'Neil, August 3, 2010 (Exhibit 124) at 33-36.

Justice Mulligan challenged several appointments for which he perceived a “disconnect” between scoring by the local interview panel and scoring by the final round interviewers – *i.e.* where the final interview panel ranked a candidate significantly higher than the local interview panel. In one instance, Justice Mulligan questioned Deputy Commissioner Patricia Walsh about a particular appointment and testified that he believed Walsh was dishonest when she represented that the most qualified candidate was selected. In 2006, Justice Mulligan had a meeting with regional administrator Edward Dalton about his concern that hiring within Probation was essentially fraudulent. Accordingly, Chief Justice Mulligan did not shrink from confronting the problem.

Despite his efforts and his belief that the hiring process was dishonest, Justice Mulligan was faced with a gargantuan task, a hostile Commissioner determined to subvert him, and pervasive dishonesty among the Commissioner, his senior staff (including Legal Counsel) and their communications with the Court even when the Chief Justice specifically sought assurance that an individual selected was the most qualified candidate.

Chief Justice Mulligan took a narrow view of his authority to reject the Commissioner’s proposed candidates:

- A. I considered my authority overseeing probation’s hiring is as follows: One, that probation hired pursuant to the policies which were in the personnel policies and procedures manual, that is, they conducted a process that was consistent with the policies; two, that they had -- my review that they had adequate funds to actually engage in the hiring, which I suppose is the very first step, one; and, three, that their hiring complied with the affirmative action policies in the trial court.

There are, as you say, statutes. And there was outside sections in the budgets for the last several years reinforcing the exclusive appointment power in the commissioner of probation relative to hiring within the probation service.

Testimony of Robert Mulligan, October 4, 2010 (Exhibit 122), at 4-5.²⁹

The statutes and budget sections Chief Justice Mulligan referenced are M.G.L. 276, § 83, which was amended in 2001 to give the Commissioner the power to appoint probation department employees, and budgetary enactments since 2000, which have purported to give the Commissioner “exclusive” hiring authority. Based on these provisions, Chief Justice Mulligan believed his authority to reject an appointment was limited to situations in which the Commissioner failed to follow Trial Court hiring policies and procedures.

The *Policies and Procedures Manual* requires hiring the most qualified individuals based solely on the merits (with limited accommodation for affirmative action and collective bargaining agreements). Accordingly, if lesser candidates were appointed based on considerations other than merit, the Court could have rejected such appointments. During his testimony, Justice Mulligan agreed that, based on language in the *Policies and Procedures Manual*, he had and has authority to ensure that hiring is merit-based:

Q. The statutory language or the regulatory language of the policies and procedures manual indicates in the first two paragraphs of Section 4.000 that hiring shall be of, quote, “the most qualified individuals.” And it goes on in the second paragraph of 4.0 to say that such hiring shall be, quote, “based on their qualifications.”

Didn’t that give you the authority to reject, in the event that you determined that hiring with respect to the most qualified individual did not occur?

A. I suppose it -- on the face of it, it may -- I guess it did give me the -- but to -- yeah. I’ll answer -- leave the answer the way it is.

Q. Apart from whether you would have known the intricacies of particular recommendations and how you could be expected to fully understand either the qualifications of the

²⁹ Relevant excerpts of the testimony of Chief Justice Mulligan accompany this Report as Exhibit 122.

proposed appointment or whether an individual was most qualified, am I missing something or does the regulation appear to give you the power to reject, according to the statute, if standards are not met, including the most qualified applicant?

A. No. I think you're correct. I believe you're correct.

Q. If you look at page 6 of 17, Section 4.304 on nepotism under Subsection A, it says, quote, "It is the policy of the trial court that all appointments be made solely on the basis of merit," end quote. Then it goes on to talk about nepotism as such.

Q. Doesn't that reinforce the notion that whatever appointment authority the commissioner had, it was subject to the hiring being solely on the basis of merit?

A. It does.

Testimony of Robert Mulligan, October 4, 2010 (Exhibit 122), at 21-22.

The Chief Justice currently has statutory authority to amend the Trial Court's *Policies and Procedures Manual* and can enact strict standards to guard against favoritism in the hiring process. M.G.L. 211B, § 8. For example, nothing prevents the Chief Justice from requiring that judges sit on final interview panels as buffers against the kind of fraudulent conduct that has occurred.

While acknowledging the resource limitations on the Chief Justice, who must concurrently oversee the several divisions of the Trial Court, Independent Counsel concludes that AOTC must reassert its role in reforming standards for hiring within the Probation Department. The Chief Justice may wish to consider modifying existing policies and procedures, and implementing strict hiring criteria to guard against abusive patronage hiring.

III. RECOMMENDATIONS

The May 24, 2010 Order requested that Independent Counsel provide “such recommendations as he may deem appropriate to the Justices of the Supreme Judicial Court with respect to indications or findings of misconduct, if any, on the part of any employee of the judicial branch.” As set forth above and in the following findings, the evidence of misconduct by employees of the judicial branch is substantial and warrants intervention by the Court.

A. Discipline of Employees

It is critical that the Commissioner of Probation be a person of demonstrated ability and unquestionable integrity. Commissioner O’Brien is neither and should not be permitted to return to the Probation Department. The evidence demonstrates that O’Brien engaged in potentially criminal fraud by orchestrating hiring and promotion decisions within the Department, and violated state campaign laws by soliciting employees for political contributions on state property. For these reasons alone he should not be entrusted with the management of an organization whose essential purpose is fundamental to the criminal justice system and dependent upon the integrity of its leader. O’Brien is in no position to serve as the Commissioner of the Department given his conduct.

O’Brien retaliated against individuals who failed to comply with a fraudulent process, and refused to cooperate with this investigation despite posturing that he would do so. He refused even to state whether he was in compliance with the Court’s document preservation order. It is impossible to see how O’Brien could be placed in a position of authority over Probation Department employees, many of whom did cooperate in the investigation. The

recommendation of Independent Counsel therefore is that Commissioner O'Brien be terminated from the Probation Department pursuant to such procedures as may be required.

First Deputy Commissioner Tavares, by her own admission and through the testimony of others, was extensively involved in the Department's fraudulent hiring and promotion practices. As an attorney and member of the Massachusetts Bar, Tavares should have refused to be an active participant in this scheme. She initially cooperated with the investigation during her early testimony, providing valuable information concerning Commissioner O'Brien's role in fraudulent hiring. Tavares would ordinarily be given credit for doing so, but she subsequently refused to testify on the second day of her testimony, invoking her Fifth Amendment and Article 12 rights. Independent Counsel concludes that disciplinary action against Tavares is merited, up through and including termination. She should be suspended forthwith and referred to the Board of Bar Overseers.

Deputy Commissioner Francis Wall was identified by numerous witnesses as having been extensively involved in the fraudulent hiring and promotion scheme. His role included providing names of sponsored candidates to members of local interview panels; falsely scoring on local interview panels for chief probation officer positions and final interview panels; and implementing retaliatory sanctions against regional supervisors Slaney and Dalton. Wall was also involved in unlawfully soliciting contributions to political candidates from Probation Department personnel at One Ashburton Place.

The evidence further suggests that Wall may have testified falsely during arbitration proceedings following grievances initiated by unsuccessful candidates for promotion. He refused to cooperate with this investigation and refused to state whether he was in compliance with this Court's document retention order. As with Commissioner O'Brien, it is impossible to

see, given potentially criminal conduct and his history of retaliation, how Wall can remain in a position of authority within the Department. The recommendation of Independent Counsel is that Deputy Commissioner Wall be terminated from the Probation Department using such procedures as may be required and that he be suspended forthwith.

Deputy Commissioner Christopher Bulger testified that he was unaware until recently of fraudulent hiring and promotion though he “assumed” it was the practice. Independent Counsel did not find Bulger credible. Rather, he was consistently evasive and dishonest. Even were one to accept his testimony, it would reflect poorly on Bulger’s competence and judgment as counsel for the Department if he was unaware of a pervasive hiring and promotion scheme that involved virtually all of his fellow Deputy Commissioners, resulted in a back-and-forth letter writing campaign against AOTC in which he participated, and implicated the sworn testimony of Probation Department employees during grievance proceedings.

Furthermore, Bulger acknowledged that throughout this investigation he has regularly informed Commissioner O’Brien of the testimony of witnesses and the direction of the investigation, conduct irreconcilable with his fiduciary duties to the Department and the Trial Court. Independent Counsel recommends that Bulger be suspended forthwith and that his conduct and testimony be reviewed for potential termination by AOTC and sanction by the Board of Bar Overseers.

Three retired Deputy Commissioners – First Deputy Commissioner John Cremens, Deputy Commissioner William Burke, and Deputy Commissioner Patricia Walsh – participated, by their own admission (Cremens, Burke) or the testimony of others (Walsh) in the fraudulent hiring and promotion process. Given their status, it is unclear what, if any, disciplinary action

can be taken against them. Burke and Walsh may be subjects of follow-on criminal investigations.

Others described in this Report as involved in implementing the hiring and promotion process – regional supervisors, chief probation officers, and administrative personnel who passed on names of favored candidates – all bear some responsibility. Some of these individuals feared retaliation if they did not comply with the institutionalized fraud. Independent Counsel recommends that this Court inform AOTC and the Probation Department of these findings so that AOTC may consider whether employment sanctions should be imposed.

Independent Counsel notes that not all individuals involved in implementing fraudulent hiring and promotion are identified in this Report, as undertaking that task was beyond the resources of this investigation. It is Independent Counsel's view that while many Probation employees are culpable in a literal sense, they were pressured to act by the Commissioner and a systemic imperative that failure to cooperate with the fraud posed risks to their jobs and opportunities for advancement. Accordingly, Independent Counsel does not recommend specific sanctions against any of them.

B. Corrective Action

In addition to imposing such disciplinary action as may be appropriate, there is the question whether remedial action is warranted or even possible with respect to individual hiring decisions. Independent Counsel concludes that no such action is feasible in light of time and complexity.

For example, some may assert that sponsored candidates should be removed from their positions and replaced with the next highest-ranked, non-sponsored candidates. This would be

unworkable and in selected cases would produce its own inequity. Under the labor agreement between AOTC and the probation officer's union, it does not appear possible to divest the current employees of their positions, even if they obtained those positions unfairly.

Institutionally, it would likely be disruptive and imperfect at best. Nor would it necessarily be in the public interest.

Moreover, the testimony was that in some cases the sponsored candidates were themselves the most qualified, or arguably the most qualified candidates. While there was testimony that more qualified candidates were routinely passed over, it may be difficult to identify such cases with confidence. Without the cooperation of Commissioner O'Brien, Deputy Commissioner Wall, or retired Deputy Commissioner Walsh, all of whom have consistently refused to cooperate with this investigation, and the cooperation of First Deputy Commissioner Elizabeth Tavares, who has now refused to cooperate, it would be impossible to establish what the unbiased rankings for each position would have been.

The evidence demonstrated that fraudulent hiring has been occurring since Commissioner O'Brien arrived in the late 1990s. At this point many individuals who may have been hired have been in their posts for up to a decade or more. Whatever the circumstances of their having obtained these positions, it is unclear that disruption of their employment or the Probation Department would be in the public interest.

C. Policy Changes

No hiring and promotion system, perhaps other than one based entirely on a multiple choice written exam with no oral component – which Independent Counsel does not recommend – is manipulation-proof. Many witnesses, even those critical of hiring and

promotion practices under Commissioner O'Brien, stated that favoritism in hiring into and promotions within Probation existed to some extent prior to O'Brien and prior to the 2001 legislative change. Nonetheless, the position of Commissioner demands a highly qualified professional empowered to select Deputy Commissioners with comparable ability. The Administrative Office of the Trial Court needs the resources and statutory charter to hire and promote only the "most qualified individuals," inclusive of union and affirmative action obligations.

To paraphrase James Madison, if Probation Department employees and judges were angels, there would be no need to guard against fraudulent hiring and promotion. But they are not; numerous witnesses testified that influence ridden hiring and promotion occurred in varying degrees when judges controlled personnel decisions.³⁰

Independent Counsel therefore believes that a system of checks and balances might be implemented to guard against both the corruption which infected the Probation Department, and favoritism generally. In conducting interviews, the Trial Court and the Probation Department may wish to consider an equal number of representatives at each level of interview, including the "final round" in which no judge currently participates. Two representatives of the Court could be present at regional level interview (as is presently the case only for chief probation officer positions), and two representatives of the court at final interviews. Screening level interviews for probation officer candidates and initial interviews for associate probation officers may also warrant judicial participation or a designee of the Court.

While not perfect, such a system has the potential to improve the current process. First, it will ensure that a candidate, before moving on to the next round of interviews, has at least some

support from judicial and Probation interviewers, eliminating the risk of wholly unqualified candidates being selected solely on the basis of connections. Second, the presence of judicial representatives at final interviews will prevent outright fraud, such as the rescoring of “Commissioner’s Choice” candidates.

Independent Counsel further recommends that training concerning the legal aspects of hiring be given periodically to individuals participating in hiring and promotion as interviewers. Such training might include reflection on current excesses and the consequences to Probation and to interviewers of falsifying scoring and evaluation of candidates.

Finally, Independent Counsel recommends that, to the extent calls are received by OCP from legislators or others with respect to future entry-level and promotional positions, a record of all such calls, and the names of the relevant callers and candidates, be maintained and provided to the Administrative Office of the Trial Courts upon request. That legislators, judges and others may recommend a particular candidate is neither inappropriate nor illegal, and this Report should not be understood to suggest otherwise. But it is for objective interviewers and not those making such recommendations to decide what weight, if any, to be accorded to a recommendation. Legislators, judges and other elected officials should have no expectation that a recommended candidate, otherwise not the best choice, will be hired.

D. Referrals to Prosecutorial Authorities

As discussed above in the Conclusions, the rigging by public employees of a hiring and promotion process in favor of politically-connected applicants may constitute criminal conduct in violation of federal fraud statutes, *United States v. Sorich*, 523 F.3d 702 (7th Cir. 2008), and

³⁰ See, e.g., Testimony of Stephen Bocko, September 13, 2010 (Exhibit 94), at 13-16. Relevant excerpts of the

state law. M.G.L. c. 268A, § 1 et seq. (conflict of interest laws and regulations regarding conduct of public employees); M.G.L. c. 274, § 7 (conspiracy). Such practices may also constitute criminal violations of Massachusetts campaign finance laws. M.G.L. c. 55, §§ 13, 14.

There is statistical evidence supporting a conclusion that certain state legislators encouraged persons in the Probation Department to make campaign contributions in exchange for sponsorship for a Probation position. If such conduct occurred, it may be in violation of state and federal bribery statutes.

Independent Counsel expresses no final view on the criminal guilt or innocence of any individual discussed in this Report. The observations and conclusions regarding specific employees are based solely on evidence available at this time and given finite resources. I do, however, recommend that the appropriate federal and state law enforcement authorities be made aware of the findings in this Report so that they may decide what action, if any, should be taken following submission of this Report.

testimony of Deputy Commissioner Bocko accompany this Report as Exhibit 94.

BACKGROUND OF THE INVESTIGATION

I. THE *BOSTON GLOBE* SPOTLIGHT STORY

1. The Administrative Office of the Trial Court has been concerned with Commissioner O'Brien's hiring and promotion decisions for years. Some press attention, for example from Commonwealth Magazine, had also been directed to the issue. The immediate impetus for this investigation, however, was a story that ran on May 23, 2010, in the *Boston Globe*, written by the *Boston Globe* Spotlight Team, entitled An Agency Where Patronage is Job One.³¹

2. In that story, the *Globe* reported that applicants for hiring into or promotion within the Probation Department stood a far greater chance of success if they were "friends, relatives or financial backers" of Massachusetts elected officials, judges, or Commissioner O'Brien himself. This conclusion was reached based on interviews with witnesses, a review of publically-available contribution information, and an analysis of family relationships among Probation Department employees and politicians and judges. The *Globe* also provided examples of "connected" individuals being shielded from discipline or termination.

3. All told, the *Boston Globe's* findings could be grouped into four categories: (1) "[t]he department is beset by a 'pay to play' mentality in which ambitious employees, whether qualified or not, make campaign contributions to key politicians in hopes of advancing their careers"; (2) "[p]romising candidates who don't have political connections are routinely passed over to make way for the politically wired"; (3) "[l]ax oversight of the collection of fines and court costs paid by probationers has left the department, which handles more than \$70 million a

³¹ A copy of the *Boston Globe* story accompanies this Report as Exhibit 19.

year in cash, vulnerable to theft”]; and (4) “politically connected employees with histories of alleged misconduct or sloppy work avoided serious career fallout.”

4. Troublingly, the *Globe* reported that O’Brien and the Probation Department received certain benefits in exchange for the Commissioner’s and the Department’s practice of hiring and promoting the friends, family, and financial backers of elected officials. In particular, the *Globe* reported that the Legislature increased the Department’s budget by “more than 160 percent from 1998 to 2008, a period in which other public safety agencies’ spending increased by 20 percent or less ...”

II. THE ORDER ESTABLISHING THIS INVESTIGATION

5. On May 24, 2010, Chief Justice Margaret Marshall of the Supreme Judicial Court and Chief Justice for Administration and Management Robert Mulligan issued a joint statement observing that:

the recent media coverage of the Office of the Commissioner of Probation raises serious issues concerning the hiring and promotion of probation officers and other management practices within the Probation Department of the Trial Court. We are deeply concerned with not only the proper administration of the Probation Department, but with how such reports may affect the public’s perception of the integrity of all aspects of the judicial branch. The reporting by the *Boston Globe* Spotlight Team requires a full, prompt and independent inquiry.³²

6. Accordingly, by order dated May 24, 2010, the Justices of the Massachusetts Supreme Judicial Court appointed Paul F. Ware of Goodwin Procter LLP to serve as Independent Counsel for purposes of investigating the alleged wrongdoing.

7. In that order, the Court instructed that:

- (1) Paul F. Ware, Jr. Esquire of Boston be, and hereby is, appointed Independent Counsel with the powers of Special

³² A copy of the May 24, 2010 joint statement accompanies this Report as Exhibit 2.

**PRIVILEGED AND CONFIDENTIAL
BY ORDER OF THE SUPREME JUDICIAL COURT**

Master and Commissioner to conduct a prompt and thorough administrative inquiry into alleged improprieties with respect to the hiring and promotion of employees within the Probation Department, as well as other practice and management decisions within the Probation Department that have been called into question, and to file with this Court within ninety days of this date, or as soon as possible, a report of his findings, conclusions, and recommendations;

- (2) the Independent Counsel shall also make such recommendations as he may deem appropriate to the Justices of the Supreme Judicial Court with respect to indications or findings of misconduct, if any, on the part of any employee of the judicial branch; and
- (3) the Independent Counsel shall have, in addition to the usual powers of a Special Master and Commissioner, the power to subpoena witnesses and to administer oaths.

8. On May 27, 2010, this Court issued an order to employees of the Probation Department, requiring them to retain documents “concerning the Probation Department, including but not limited to the business of the Probation Department (including third-party contractors) and personnel decisions of or affecting the Probation Department (such as hiring or promotion decisions).”³³

9. On June 30, 2010, the Court issued an additional order permitting Independent Counsel to delegate work to other attorneys at Goodwin Procter, subject to his supervision:

In furtherance of the Order of May 24, 2010, appointing Independent Counsel to conduct a prompt and thorough administrative inquiry regarding the practices and procedures of the Probation Department that have been called into question, It Is Further Ordered that Independent Counsel shall be authorized in his discretion to delegate to persons at Goodwin Procter LLP such functions as he deems necessary and appropriate to the investigation, including the review of documents, interviews of individuals, and taking of testimony under oath in furtherance of the investigation. Such delegation shall occur only to the extent

³³ A copy of the May 27, 2010 order accompanies this Report as Exhibit 3.

that the investigation and all delegated functions occur under the direct supervision of the Independent Counsel, who shall be responsible for all such activities.³⁴

10. A list of the attorneys at Goodwin Procter to whom responsibility was delegated during the course of this investigation appears in this Report as Appendix 1.

III. THE COURSE OF THE INVESTIGATION

A. Overview

11. The May 24, 2010 Order appointing Independent Counsel granted Independent Counsel, “in addition to the usual powers of a Special Master and Commissioner, the power to subpoena witnesses and to administer oaths.” *Id.* at ¶ 3.

12. Pursuant to these powers, Independent Counsel conducted an administrative inquiry into alleged improprieties with respect to the hiring and promotion of employees within the Probation Department, as well as the other practices and management decisions within the Probation Department that had been called into question. The investigation included, but was not limited to: (1) the taking of sworn testimony from sixty-eight (68) witnesses; (2) twenty-seven (27) informal interviews; and (3) the review of over 525,000 documents from the Probation Department and AOTC, including personnel and hiring files of Probation Department employees; other documents relating to hiring and promotions within the Department, including files relating to the grievance and arbitration process; email and letter communications between relevant individuals; and documents provided by numerous witnesses and confidential informants. Finally, Independent Counsel reviewed emails and documents from computer hard drives.

³⁴ A copy of the July 1, 2010 Order accompanies this Report as Exhibit 4.

13. This exhaustive examination and analysis serves as the basis for the findings of fact discussed in detail in the remainder of this Report.

B. Informal Interviews

14. The investigation began with background interviews of persons who were considered likely to have information pertinent to the investigation. The witnesses interviewed included not only present employees of the Probation Department, but also former employees of the Department, present and former employees of the executive branch of the state government, one state legislator, and various other non-employees.

15. The information obtained from these voluntary interviews was extremely useful in the early stages of the investigation.

16. An alphabetical listing of all individuals informally interviewed appears in this Report as Appendix 2.

C. Sworn Testimony

17. During the course of this investigation, 67 witnesses appeared pursuant to subpoenas issued by the Independent Counsel. As with the informal interviews, the witnesses included present and former employees of the Probation Department, present and former employees of the executive branch of the state government, several state legislators, and other non-employees.

18. Each witness who appeared to provide sworn testimony was provided a copy of a written warning, setting forth several potential uses that might be made of the testimony by the Court and/or other entities such as federal and state law enforcement organizations. Witnesses were provided a chance to review the warning and, if represented by counsel, to discuss the warning with counsel. Independent Counsel then asked the witness if he or she had any

questions concerning the content of the warning. If there were no questions, or any questions were answered, the witness was asked to sign the warning to acknowledge its receipt.³⁵

19. In the course of taking sworn testimony, a question arose whether counsel for the witnesses should be permitted in the examination room during questioning. In response to a motion this Court clarified, in a non-precedential order dated August 16, 2010, that, in the exercise of its discretion, the Court would permit counsel for witnesses to be present.³⁶

20. One witness subpoenaed by Independent Counsel, Representative Thomas Petrolati, moved this Court to quash the subpoena issued to him. He argued that the subpoena was *ultra vires* the Court's statutory authority and ran afoul of the constitutional separation of powers. By order dated September 16, 2010, this Court denied that motion.³⁷

21. An alphabetical listing of all individuals who were subpoenaed and have appeared to testify appears in this Report as Appendix 3. A separate alphabetical listing of all individuals who were subpoenaed, but, as of the date of this Report, have not yet appeared to testify, appears in this Report as Appendix 4. In some cases we learned that, for health or other valid reasons, the subpoenaed individuals were not available. In other cases we were unable to locate the subpoenaed individuals. A list of the unavailable witnesses appears in this Report as Appendix 5.

22. Several witnesses who appeared invoked their right, under the Fifth Amendment to the U.S. Constitution and/or Article 12 of the Massachusetts Declaration of Rights, not to testify on the basis that their answers could be self-incriminating. In several instances, current Probation Department employees invoked their Fifth Amendment and/or Article 12 rights,

³⁵ A copy of the warning accompanies this Report as Exhibit 91.

³⁶ A copy of the August 16, 2010 order accompanies this Report as Exhibit 5.

³⁷ A copy of the September 16, 2010 order accompanies this Report as Exhibit 6.

thereby refusing to cooperate with this investigation. The questions that some such employees refused to answer included whether they complied with this Court's May 27, 2010 document retention order.

23. The Probation Department employees who refused to testify under oath concerning the substance of this investigation were Commissioner John O'Brien; Deputy Commissioner Francis Wall; Former Deputy Commissioner Patricia Walsh; Regional Program Manager Eugene Irwin; Regional Program Manager Kathleen Petrolati; Chief Probation Officer Richard Bracciale and Chief Probation Officer Joseph Hamilton. First Deputy Commissioner Elizabeth Tavares testified on the first day on which she was called to testify in July 2010, but in a second day of testimony in October 2010 refused to testify further.

24. The non-employees who refused to testify under oath concerning the substance of this investigation were former Speaker Thomas Finneran and Representative Thomas Petrolati.

D. Documents Collected

25. Our investigation required the examination and analysis of more than 525,000 documents in electronic and paper format. Independent Counsel issued *subpoenas duces tecum* to nearly all the individuals who testified under oath, and many of these witnesses provided responsive documents to the Independent Counsel.

26. In addition, many of the individuals whom we interviewed informally provided relevant documents. Further, unsolicited individuals sent the Independent Counsel letters and other documents that warranted review. Some of these individuals contacted the Independent Counsel's office by telephone or email.

27. Electronic document collection efforts included the retrieval and search of hard drives seized from some OCP employees. We also retrieved and reviewed over 150,000 emails

from the files of OCP employees. The list of employees whose email and/or computers were searched appears in this Report as Appendix 6.³⁸

28. For the purpose of identifying and analyzing hirings and promotions within the Department that may have involved impropriety, Independent Counsel collected over 150 hiring and personnel files from AOTC. Independent Counsel collected and reviewed over 25 additional personnel files from OCP offices, including reviewing the files of various OCP management-level employees and certain employees against whom allegations of impropriety had been made. Document collection efforts at OCP further included the collection of 25 boxes of materials from the files of the Commissioner's Office, including boxes of communications, memoranda, and internal documents.

29. Independent Counsel also took possession and custody of all scoring sheets relating to any hiring or promotion which totaled 100 additional boxes of materials.

30. Finally, Independent Counsel collected and reviewed files from grievances initiated by employees who had failed to obtain promotions within the Department, and files from 38 arbitrations between the probation officers' union and AOTC following unsuccessful grievances.

³⁸ Late in the investigation Independent Counsel learned that there is a server which houses Probation Department documents. We have not reviewed the contents of the server.

BACKGROUND OF THE MASSACHUSETTS PROBATION DEPARTMENT

I. HISTORY OF THE DEPARTMENT

31. Massachusetts has a long-standing tradition of using probation as a court-ordered sanction and rehabilitative tool for individuals convicted of crime. Massachusetts implemented a system of probation in 1841, which was officially incorporated into the court system in 1878.

32. The Office of the Commissioner of Probation (“OCP”) is a department of the Massachusetts Trial Court and is comprised of the Massachusetts Probation Service (often referred to as the “Probation Department”) and the Office of Community Corrections (“OCC”).

33. The Office of the Commissioner was established by M.G.L.A. c. 276, § 98 in 1956. Prior to that time, there was a Board of Probation appointed by the Chief Justice of the Superior Court.³⁹ In 1956, when the position of Commissioner was established, the power to appoint the Commissioner was also vested in the Chief Justice of the Superior Court. In 1978, the statute was amended to give the Chief Justice for Administration and Management the power to appoint the Commissioner of Probation.⁴⁰

34. M.G.L.A. c. 276, § 98 originally limited the Commissioner to a 6-year term. In 1993, the Legislature amended the statute and the term limit was removed. As of July 1, 2010, however, a new term limit of five years was established.

II. COMPOSITION AND RESPONSIBILITIES OF THE DEPARTMENT

35. The Office of the Commissioner is comprised of 118 employees and is responsible for administrative functions and oversight of the Probation Service and Office of Community Corrections, including hiring, promotion and discipline of employees; overseeing financial and budget related matters; performing audits of the various Probation Departments to

³⁹ M.G.L.A. c. 276, § 98. A copy of this statute accompanies this Report as Exhibit 14.

ensure they are functioning properly; training of Probation Department employees; drafting and tracking legislation related to the Probation Department; and overseeing the electronic monitoring of probationers, among other responsibilities.

36. The Programs Division of OCP is further responsible for system-wide initiatives, such as the Department's Electronic Monitoring ("ELMO") program. The ELMO program has an additional 48 employees.

37. The Probation Service is comprised of 1,807 employees in 105 individual Probation Departments located in each of the Superior, District, Juvenile, Probate and Family and Boston Municipal Courts. Within the various Departments, probation officers are responsible for overseeing individuals placed on probation as a condition of disposition of criminal matters before the Court. Their work includes supervising probationers, reporting findings and making recommendations to the court, enforcing court orders, and electronic monitoring of certain probationers. In the probate and family courts, probation officers serve more as investigators and mediators on contested probate and family court issues, such as child custody and divorce disputes.

38. The Office of Community Corrections was created in 1996. It is comprised of 21 Community Corrections Centers throughout Massachusetts and employs 97 people.⁴¹ Community Corrections Centers are "community-based supervision sites where offenders must check-in regularly." Individuals assigned to the Community Corrections Centers must also perform community service projects. Community Corrections Centers are manned by probation officers with the title "probation officer in charge."

⁴⁰ M.G.L.A. c. 276, § 98 (Exhibit 14).

⁴¹ A Probation Primer: A Guide to the Massachusetts Probation Service and the Office of Community Corrections, available at <http://www.mass.gov/courts/probation/>.

III. LEADERSHIP OF THE DEPARTMENT

A. Commissioner John O'Brien

39. The Commissioner of Probation from 1998 until his suspension on May 24, 2010 was John O'Brien. O'Brien was appointed as Commissioner on December 2, 1997 by then-Chief Justice for Administration and Management John Irwin. O'Brien took office on January 1, 1998.

40. Numerous witnesses stated that Commissioner O'Brien and Chief Justice Irwin had developed a close relationship in the years preceding O'Brien's appointment. Among other factors contributing to this relationship, witnesses identified O'Brien's having attended Irwin's alma mater, Boston College; Irwin's being a judge in Suffolk Superior Court when O'Brien worked as a probation officer and then assistant chief probation officer in that Court; O'Brien's work as the Regional Coordinator for the Superior Court Administrative Office when Irwin was Chief Justice of the Massachusetts Superior Court; and O'Brien's work as Coordinator of Intergovernmental Relations and then Executive Director of the Office of Community Corrections for AOTC under Chief Justice Irwin.⁴²

41. O'Brien's appointment as Commissioner was controversial at the time. Witnesses told us that many believed Ronald Corbett, then First Deputy Commissioner in the Department, was the logical choice for Commissioner and should have been appointed instead of O'Brien.⁴³ Among other qualifications, Corbett has a Ph.D. in education and, at the time, had 24 years experience in the Probation Department, including seven years as a Deputy Commissioner.⁴⁴

⁴² Testimony of Robert Mulligan (Exhibit 122), October 4, 2010, at 13, 27; Informal interview of Donald Cochran; Informal interview of Ronald Corbett. A copy of O'Brien's resume accompanies this Report as Exhibit 24.

⁴³ See, e.g., Informal interview of Donald Cochran.

⁴⁴ Informal interview of Ronald Corbett.

Corbett was involved in several national probation organizations and is highly regarded by O'Brien's predecessor, Commissioner Donald Cochran.⁴⁵ In comparison, O'Brien has no graduate degree and had only achieved the rank of assistant chief probation officer within the Probation Department.⁴⁶ For the several years prior to his appointment as Commissioner, O'Brien was not even working in the Probation Department.⁴⁷

42. There is evidence that Chief Justice Irwin made the qualifications for Commissioner less rigorous so that O'Brien would qualify. When Don Cochran was appointed Commissioner in 1984, the position required a "master's or doctor's degree" and no fewer than 10 years of experience in probation, corrections, parole or other criminal justice-related employment, including three years in an administrative capacity.⁴⁸ When the Commissioner's position was posted in 1997, however, the qualifications were changed and the educational requirement was decreased – the requirement of a master's or doctorate degree was eliminated. The only requirement was that a candidate have "extensive knowledge of the criminal justice system and probation service as would normally be acquired through graduate study and experience within the fields of probation, criminal justice or parole or an equivalent combination of education and experience."⁴⁹

43. Since O'Brien's suspension on May 24, 2010, Ronald Corbett has been serving as Acting Commissioner.

⁴⁵ Informal interview of Donald Cochran.

⁴⁶ O'Brien's resume (Exhibit 24).

⁴⁷ O'Brien's resume (Exhibit 24).

⁴⁸ A copy of the 1984 Position Vacancy Announcement for the position of Commissioner of Probation accompanies this Report as Exhibit 21.

⁴⁹ A copy of the 1997 Position Vacancy Announcement for the position of Commissioner of Probation accompanies this Report as Exhibit 22.

B. The Probation Department Hierarchy

44. The Probation Department has an extensive management structure, beginning with the Commissioner and reaching down to assistant chief probation officers assigned to the local courts. A copy of an organizational chart setting forth the hierarchy within OCP itself accompanies this Report as Exhibit 30.

45. Reporting to the Commissioner are the Deputy Commissioners, beginning with the First and Second Deputy Commissioners. Elizabeth Tavares presently is the First Deputy Commissioner. Tavares was promoted from Second Deputy Commissioner to First Deputy Commissioner in 2008, when then-First Deputy Commissioner John Cremens retired.

46. The position of Second Deputy has been vacant since Tavares was promoted to First Deputy. Deputy Commissioner Francis M. Wall (Deputy Commissioner, Field Services), has been functionally acting as Second Deputy during this period.⁵⁰

47. The current Deputy Commissioners are: Francis M. Wall, Stephen T. Bocko (Deputy Commissioner, Research and Training), Christopher J. Bulger (Deputy Commissioner, Legal Counsel⁵¹), and Paul Lucci (Deputy Commissioner, Programs Division and Electronic Monitoring). Patricia Walsh also served as Deputy Commissioner (Regional Administration and Juvenile Court Liaison) until she retired in the fall of 2009.

48. There are thirteen Supervisors of Probation Services employed by OCP. There are nine Supervisors responsible for overseeing the Probation Departments in the various courts in assigned geographic regions. These regional supervisors during the course of this

⁵⁰ Testimony of Nilda Rios, August 4, 2010 (Exhibit 130), at 31-32; Testimony of Paul Lucci, August 23, 2010 (Exhibit 114), at 13; Testimony of Lucia Vanasse, July 20, 2010 (Exhibit 138), at 28-29. Relevant excerpts of the testimony of Deputy Commissioner Lucci accompany this Report as Exhibit 114. Relevant excerpts of the testimony of Administrative Assistant Vanasse accompany this Report as Exhibit 138.

⁵¹ Though Bulger functions as Legal Counsel, employment records indicate that he has never actually been appointed to the position.

investigation were Jeffrey Akers, Maribeth Borsari, Francis Campbell, Edward Dalton,⁵² Edward Driscoll, Mark McHale, Brian Murphy, Ellen Slaney and Francine Ryan.⁵³ In addition, there are four supervisors who oversee different functions of the Probation Service and OCP. Richard O’Neil supervises the Probation Departments within the probate and family courts state-wide. Edward Rideout supervises the Probation Service training facility in Clinton, Massachusetts. Nilda Rios, while designated as a Supervisor, is currently tasked with working in the electronic monitoring division. Dianne Fasano is Supervisor of Probation Services for Superior Courts.

49. OCP also employees individuals who, since O’Brien has been Commissioner, have been assigned as “liaisons” to deal with legislators and legislative staffs on matters concerning the Probation Department. These individuals have been Michelle Cahill Martino (1998-2004); Maria Walsh (1998-present); and Edward Ryan (2005-2007).⁵⁴

50. Probation operations at a particular court are overseen by a chief probation officer. Depending upon the number of probation officers at a given office, there may also be one or more assistant chief probation officers assigned to the court and, if there are multiple assistant chiefs, a first assistant chief probation officer may be designated.

51. Probation officers are the front line of the Probation Department, responsible for overseeing the probationers to whom they are assigned. To free up probation officers for field work, associate probation officers handle much of the back office and in-court administrative work.

⁵² Dalton retired on August 13, 2010.

⁵³ Probation Department Organizational Chart, Exhibit 30.

⁵⁴ Testimony of Michelle Cahill Martino, July 19, 2010 (Exhibit 97), at 23, 88-91; Testimony of Edward Ryan, June 29, 2010 (131), at 39-40; Testimony of Maria Walsh, July 19, 2010 (Exhibit 139), at 5-17. Relevant excerpts of the testimony of Administrative Assistant Martino accompany this Report as Exhibit 97. Relevant excerpts of the testimony of Manager of Intergovernmental Relations Maria Walsh accompany this Report as Exhibit 139.

IV. THE PROBATION DEPARTMENT BUDGET

52. Reviewing the Probation Department's budget year-to-year is complicated by changes during the past decade in how funds are appropriated for Probation activities.

53. Prior to FY 2004, funds were appropriated for OCP directly, in order to support its oversight role with respect to local Probation offices assigned to each court and the Department's programmatic activities. Funding for the local Probation offices, however, was included within the allocations for those Courts. Thus, looking at the funding for OCP before FY 2004 does not reveal the full extent of "Probation" funding.

54. In FY 2004 funding for Department activities was consolidated in OCP. From 2005 through 2009, allocations for Probation increased steadily, from \$114.6 million in 2005 to \$142.4 million in 2009. This represents an aggregate increase of 24.2% and an average annual increase of approximately 5.6%. During this same period, the total budget for the Trial Court, of which Probation is a part, increased from \$470 million to \$576 million, an aggregate increase of 22.5% and an average annual increase of about 5.2%. Spending overall for the Commonwealth (excluding public assistance) increased from \$12.4 billion to \$14.6 billion, an aggregate increase of 17.7% and an average annual increase of about 4.2%.

55. Accordingly, the budget for Probation grew substantially faster than the Commonwealth's total budget, but not much faster than the overall budget for the Trial Court.

56. While Probation's budget growth did not outpace the Trial Court's budget growth by much, it is worth noting that the legislature repeatedly appropriated more money for Probation than the amount that AOTC requested. Each fiscal year from 2006 through 2009, funding for Probation exceeded the requests made in amounts ranging from \$1.9 million in 2008,

to \$7.4 million in 2006, \$7.6 million 2009, and \$8.5 million in 2007 – an aggregate total of \$25.4 million above what was requested by AOTC for the Department.⁵⁵

V. RELATIONSHIP BETWEEN THE DEPARTMENT AND THE COURTS

57. The Probation Department is an integral part of each court. On a daily basis, Probation Department employees interact with the judges of the court to which they are assigned and oversee probationers within those courts.

58. On an administrative level, there is extensive interaction between the Chief Justice for Administration and Management and OCP. OCP and its departments are part of and are overseen by the Trial Court. The Chief Justice for Administration and Management, in addition to having the authority to appoint the Commissioner, must approve and consent to the appointment of deputies, supervisors and assistants within the Probation Department and set the salaries for all OCP and Probation Department employees. While the Commissioner has the authority to establish reports and forms, and procedures and rules of Probation work, those must be approved by the Chief Justice for Administration and Management. The Commissioner is also tasked with assessing the needs of the Probation offices for staffing and recommending the assignment of additional personnel to the Chief Justice for Administration and Management.⁵⁶ As a consequence, the Chief Justice for Administration and Management and Commissioner must constantly interact and collaborate on various efforts.

⁵⁵ A copy of a chart setting forth budgeting information, provided to Independent Counsel by AOTC, accompanies this Report as Exhibit 18.

⁵⁶ M.G.L. c. 276, §§ 98, 99. A copy of these statutes accompany this Report as Exhibits 14 and 15.

FINDINGS – HIRING AND PROMOTIONS

I. HIRING AND PROMOTION AUTHORITY IN THE PROBATION DEPARTMENT

59. Although the investigation considered evidence of other alleged wrongdoing within the Probation Department, the principal focus was on hiring and promotion practices during the tenure of Commissioner John O’Brien. To understand the manner in which those practices were compromised to favor connected candidates, it is useful to understand how, in theory, the process by which hiring and promotion decisions within the Department should have been made.

A. Pre-2001

60. Prior to 2001, while OCP played a role in the hiring and promotion of probation officers, the authority to appoint, dismiss and assign probation officers was vested in the Chief Justice for Administration and Management.

61. Because the appointing authority was ultimately vested in the Chief Justice for Administration and Management and the judges, judges were more heavily involved in the hiring process than today.⁵⁷ For probation officers, the presiding justice for the court in question selected the candidate to be presented to the Chief Justice for Administration and Management for final approval. In any court with two or more probation officers, the first justice of that court, subject to the approval of the Chief Justice for Administration and Management, had the authority to designate a chief probation officer and assistant chief probation officers “as he

⁵⁷ Testimony of John Cremens, August 6, 2010 (Exhibit 102), at 16-17; Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 26-27; Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 16-17; Testimony of Richard O’Neil, August 3, 2010 (Exhibit 124), at 17-19.

deem[ed] necessary for the effective administration of justice.”⁵⁸ Administrative Order No. 4, *infra* at 113 – 115, enacted in 1989, governed the process for hiring chief probation officers.

B. Post-2001

62. In 2001, M.G.L.A. c. 276, § 83 was amended and the authority previously vested in the Chief Justice for Administration and Management and the first justices was transferred to the Commissioner of Probation. The Commissioner was granted authority to “appoint, dismiss and assign” probation officers to the trial courts and designate chief probation officers and assistant chief probation officers.

63. Anthony Sicuso, Deputy Commissioner/Legal Counsel at the time, testified that he wrote the first draft of the 2001 amendment in consultation with Commissioner O’Brien.⁵⁹

64. This amendment was controversial at the time. Some in the press raised (prescient) concerns that centralizing hiring authority in Commissioner O’Brien would result in increased patronage hiring.⁶⁰

65. Beginning in 2001, the budget line-item for OCP included the following language appearing to grant additional authority to the Commissioner: “For the office of the commissioner of probation provided, that notwithstanding any general or special law or rule or regulation to the contrary, the commissioner, subject to appropriation, shall have *exclusive authority* to appoint, dismiss, assign and discipline probation officers, associate probation officers, probation officers-in-charge, assistant chief probation officers and chief probation officers...” (emphasis added).

66. The Chief Justice for Administration and Management, however, retained the power to reject any appointment not in compliance with M.G.L. c. 211B, § 8 which governs the

⁵⁸ M.G.L.A. c. 276, § 83 (1992). A copy of M.G.L.A. c. 276, § 83 accompanies this Report as Exhibit 13.

⁵⁹ Testimony of Anthony Sicuso, September 30, 2010 (Exhibit 134), at 98-99.

hiring of all trial court employees, except judges, clerks and registers of probate. M.G.L. c 211B, § 8 gives the Chief Justice for Administration and Management the power to “establish and promulgate standards for the appointment, performance, promotion, continuing education and removal of all personnel within the trial court...” “The Chief Justice for Administration and Management shall have the power to reject any [appointment governed by c. 211B, § 8] within fourteen days after receipt of the certification of compliance by the appointing authority but such power to reject any such appointment shall be limited to non-compliance with the standards for appointment.”

67. This residual authority of the Chief Justice for Administration and Management was confirmed by this Court. In addressing a challenge brought against the statutory amendment by sitting judges, the Court explained that “it remains entirely within the Chief Justice’s power to establish a set of conditions that the commissioner would be required to follow in the appointment of probation officers, including strict compliance with all aspects of the personnel manual.” *First Justice of the Bristol Div. of the Juvenile Court Dep’t v. Clerk-Magistrate of the Bristol Div. of the Juvenile Court Dep’t*, 438 Mass. 387, 407 (2003).

68. As a practical matter, since 2001 the judges have become less involved in hiring. At most, judges sit on a first round of interviews for their respective courts, but their vote in hiring garners no more weight than that of the two designees from OCP.

II. OVERVIEW OF THE HIRING AND PROMOTION PROCESS SINCE 2001

69. During the tenure of Commissioner O’Brien, the Probation Department has employed extensive procedures for the hiring of associate probation officers and probation officers, as well as for promotions to assistant chief probation officer and chief probation officer.

⁶⁰ A copy of the article “A Bid To Boost Patronage in State Courts,” *The Metro West Daily News*, November 30, 2001, accompanies this Report as Exhibit 20.

70. In short, applicants for each position go through one or two rounds of initial interviews (depending upon the position), after which the high-ranked or high-scoring candidates are referred to the next round of interviews, culminating in a final round in which candidates were purportedly ranked on their responses to standard questions.

71. Candidates who are unsuccessful in being hired or promoted are mailed a letter, signed by the Commissioner, suggesting that the candidate was simply outmatched by the successful candidate. As commonly stated in such letters:

Thank you on behalf of the screening committee for interviewing Deputy Commissioners William Burke and Francis Wall were very impressed with your qualifications.

The selection of the final candidate(s) was a difficult process. Although you were not chosen for this position, I encourage you to persist in your efforts. The interview committee enjoyed talking with you at your interview and wish you the best in your career endeavors.

A copy of a sample rejection letter accompanies this Report as Exhibit 33.

72. These procedures provide a veneer of authenticity to hiring determinations, supporting a fiction that the most qualified candidate is always being hired. In fact, and as discussed later in this Report, the processes described are fraudulent, with candidates favored by the Commissioner, often on the basis of their legislative or other sponsors, being given artificially inflated scores and rankings.

A. Hiring Procedures Prior to 2001

73. Although the Commissioner only obtained appointment authority in 2001, prior to 2001 the Probation Department still was involved in hiring and promotion procedures for Department personnel.

74. For probation officers, OCP collected applications for open positions and determined if the applicants met the minimum qualifications for an interview. All candidates

who met the minimum qualifications were interviewed. Interviews often took several days due to the large volume of candidates.⁶¹

75. There were two rounds of interviews. The first round interview panel typically consisted of a regional supervisor from the Commissioner's Office, the chief probation officer of the court in which the vacancy existed, and a representative from the district court. In the years just prior to 2001, the district court representative who was typically a regional coordinator for the District Court Department or a District Court judge.⁶²

76. The first round interview panel asked a set of standardized questions. At the end of the process, the panelists ranked and scored the candidates. Some discussion among the panelists often occurred prior to each panelist determining his or her individual rankings.⁶³

77. After 1998, the interviewer from the Commissioner's Office was the de facto head of the interview panel and was charged with consolidating the individual panelists' scores and rankings to determine the final rankings. Prior to that time, the judges or their representatives were heads of the panel.⁶⁴

78. Regardless who was the head of the panel, the eight to ten highest ranking candidates were sent to the presiding justice of the court in which the vacancy existed for a final

⁶¹ Testimony of Jill Ziter, September 23, 2010 (Exhibit 140), at 18-19; Testimony of Rita McCarthy, September 27, 2010 (Exhibit 115), at 37-39; Testimony of Richard O'Neil, August 3, 2010 (Exhibit 124), at 17-19. Relevant excerpts of the testimony of former Regional Coordinator Ziter accompany this Report as Exhibit 140. Relevant excerpts of the testimony of Chief Probation Officer McCarthy accompany this Report as Exhibit 115.

⁶² Testimony of Jill Ziter, September 23, 2010 (Exhibit 140), at 18-19.

⁶³ Testimony of Jill Ziter, September 23, 2010 (Exhibit 140), at 18-19, 23-25.

⁶⁴ Testimony of Rita McCarthy, September 27, 2010 (Exhibit 115), at 34, 39-40. McCarthy further testified that in the mid-1980s the panel was composed of the First Justice, the presiding judge of the court and chief probation officer. *Id.* at 23-24. The Commissioner's representative was added to the panel in late-80s or early 90s though the overall process was generally the same over time. *Id.* at 25-28.

interview.⁶⁵ The presiding justice could select a candidate and then send that candidate to the Commissioner for his consent, and the Chief Justice for Administration and Management for final approval.⁶⁶

B. The Hiring and Promotion Process Required by the Administrative Office of the Trial Court After 2001

79. In 2001, the Trial Court established general policies and procedures governing the hiring of all Trial Court employees, including those within the Probation Department. Section 4.000 of the *Personnel Policies and Procedures Manual* sets forth these policies and procedures.

80. At the outset, the Manual emphasizes hiring the most qualified individual for the position. Specifically, the first paragraph of Section 4.000 states:

The successful operation of the Trial Court depends directly on the abilities and contributions of each employee in the organization. *Therefore, the objective of the hiring process is to select the most qualified individuals who can carry out their responsibilities in a competent and professional manner.*

(emphasis added).

81. Section 4.304 of the Policies and Procedures manual addresses nepotism and establishes merit as an unambiguous criterion for hiring. Section 4.304(A) reads,

It is the policy of the Trial Court that all appointments be made solely on the basis of merit. The practice and appearance of nepotism or favoritism in the hiring process are to be avoided.

(emphases added).

82. The remainder of the Manual sets forth various processes for hiring within the Trial Court, including sections addressing relating to job postings, the review of applications, and

⁶⁵ Testimony of Rita McCarthy, September 27, 2010 (Exhibit 115), at 19-21; 22-24; Testimony of Richard O’Neil, August 3, 2010 (Exhibit 124), at 17-20.

⁶⁶ Testimony of Richard O’Neil, August 3, 2010 (Exhibit 124), at 18-21.

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interviews. The Manual stresses the importance of having interviews conducted in an objective manner to determine the best candidate for the position. Section 4.302(A) and (C) state that:

(A) all applicants meeting the minimum qualification for the position must be interviewed.

* * *

(C) Interviews must be objectively tailored to measure the applicant's knowledge, skills and abilities for the position under consideration. To achieve this, the appointing authority must develop a standard set of questions designed to measure the knowledge, skills and abilities of applicants based on the job description for the specific position.

83. Subsection (E) of 4.302 specifically applies to hiring within the Probation Department. It adopts broad guidelines for hiring and interviewing and provides further specifics with respect to the composition of the interview panel and the number of candidates who may be recommended by the interview panel for appointment to the Commissioner.

In the case of a Probation Officer, Probation Officer In Charge, Assistant Chief Probation Officer, or First Assistant Chief Probation Officer vacancy, an interview committee consisting of the Commissioner of Probation (Chair) or his/her designee, the Chief Probation Officer of the Division, and a representative of the Chief Justice of the Department shall interview applicants consistent with the guidelines set forth in this section. Each candidate selected for an interview shall be evaluated and determined to be recommended or not recommended. A list not to exceed 8 names of recommended candidates for each open position shall be forwarded to the First Justice.

84. By letter of November 22, 2004, Chief Justice for Administration and Management Mulligan amended this section to reflect the statutory shift in appointment authority in 2001.⁶⁷ As modified, the last sentence of Section 4.302(E) now reads,

A list not to exceed 8 names of recommended candidates for each open position shall be forwarded to the Commissioner of Probation

⁶⁷ November 22, 2004 letter (Exhibit 36).

for appointment subject to the approval of the Chief Justice of Administration and Management.

85. This amendment to 4.302(E) followed a proposal from Commissioner O'Brien to eliminate section 4.302(E) of the *Manual* altogether, and instead to grant the Commissioner the authority to establish the process for hiring within the Department.⁶⁸ Failing that, O'Brien sought to simply remove the Chief Justice from the interview committee. Mulligan refused to grant O'Brien's request and instead simply agreed to modify the last sentence of section 4.302(E), as above.⁶⁹

C. Probation Officers

86. Hiring for probation officers takes place in "rounds" for each local court. For any given round, the local court may have one or several probation officer positions available. When the hiring of probation officers for a particular court is about to commence, the availability of positions is posted.

87. It is typical for hiring for probation officers to occur for multiple courts at the same time. In order to maximize their chances of receiving a position, it is a common practice for applicants to file separate applications for each of the several courts conducting hiring. Consequently, the same applicant may be interviewed on multiple occasions within a short period, and may come before the same interviewer on multiple occasions for different courts.⁷⁰

88. Applications for probation officer positions are received by OCP. There an initial "screen" is performed to ensure that the applicants meet the minimum qualifications for a probation officer. These qualifications include an undergraduate degree and one year of "human service" employment, which can be in any field that requires regular interaction with the public.

⁶⁸ November 22, 2004 letter (Exhibit 36).

⁶⁹ November 22, 2004 letter (Exhibit 36).

That experience is not required if a candidate has a graduate degree in a relevant field. This initial screen is performed most commonly by Janet Mucci, the department's Personnel Director.⁷¹

89. After Mucci screens out candidates who fail to meet the basic qualifications, applicants are scheduled for a first round of interviews. Until early 2005, this first round was conducted at the local court level. The local interview panel consists of the First Justice for the court, the chief probation officer assigned to the court, and a designee of the Commissioner, commonly the regional supervisor responsible for the county in which the court is located.

90. Beginning in 2005, Chief Justice Mulligan asked that the Probation Department decrease the number of candidates coming before these local interview panels. Chief Justice Mulligan's stated concern was the drain on judicial resources, as judges were sitting for days at a time doing interviews of dozens of candidates for even a single position.⁷²

91. To address this concern, the Probation Department created a level of interviews known as the screening panel. The screening panel commonly consisted of Regional Supervisor Nilda Rios and Regional Supervisor Frank Campbell.⁷³ A second screening panel to perform these initial interviews was also formed consisting of Chief Probation Officer Richard Bracciale and former Chief Probation Officer Kevin Cunniff.⁷⁴

92. The screening interview panel is required to ask candidates for probation officer positions a number of standardized questions provided by Deputy Commissioner Tavares. The

⁷⁰ See, e.g., Testimony of Richard O'Neil, August 3, 2010 (Exhibit 124), at 25-26.

⁷¹ Testimony of Janet Mucci, June 24, 2010 (Exhibit 121), at 8-9, 24-25.

⁷² A copy of the March 10, 2005 letter accompanies this Report as Exhibit 39.

⁷³ Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 31-32. Relevant excerpts of the testimony of Regional Supervisor Campbell accompany this Report as Exhibit 98.

⁷⁴ Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 32-33.

panel members then score the candidates based on their answers to the questions, aggregate the scores, and pass along the top eight candidates for each open probation officer position to the local round of interviews. If more than one position is open in that court, eight candidates may be referred for each opening.⁷⁵

93. The local interview round (whether or not following a screening round) is intended to further narrow the field of candidates who receive a final round interview. Again, the interviewers are provided with a list of standard questions from Deputy Commissioner Tavares. Each of the three interviewers is required to rank order the candidates based on their responses. Typically these rankings are averaged to determine a total ranking for the candidate. Up to eight candidates per position are then recommended for a final round interview. There is no requirement that eight candidates be referred if the panel believes fewer are qualified, but under the instructions provided to the panel and under Section 4.302(E) of the *Policies and Procedures Manual* no more than eight per position are permitted.⁷⁶

94. Importantly, a candidate must not only appear in the top eight when averaged, but at least two of the three interviewers must place the candidate among their own top eight. In other words, if one panel member ranked a candidate first, but the other two panel members each ranked that candidate ninth, the candidate cannot be referred, even if his average ranking placed him in the top eight. At the same time, if two panel members ranked a candidate eighth, but the third panel member ranked the candidate far lower (*e.g.*, 20th), that candidate might fall out of the top eight based on his average ranking, and thus be ineligible for a final round interview.⁷⁷

⁷⁵ Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 35-38.

⁷⁶ A copy of the Interview Process Memorandum from Tavares accompanies this Report at Exhibit 27. *See also* March 29, 2005 letter from Chief Justice Mulligan to Commissioner O'Brien. A copy of this letter accompanies this Report as Exhibit 42.

⁷⁷ Interview Process Memorandum (Exhibit 27); March 29, 2005 letter (Exhibit 42).

95. Under limited circumstances, a list of finalists may have nine or more candidates. In particular, under the union contract for probation officers, some current probation officers applying to move to another Court must be automatically added to the list of finalists.⁷⁸

96. Candidates making it through the local round of interviews receive a final round interview. This round is held before an interview panel consisting of two Deputy Commissioners from OCP working directly for Commissioner O'Brien. For most of the time period in question, this panel consisted of Deputy Commissioners Francis Wall and Patricia Walsh. Other individuals who sat in on this final round included Administrative Assistant to the Deputy Commissioner for Field Services Edward McDermott, Deputy Director of the Office of Community Corrections Patricia Horne, Deputy Commissioner William Burke, and Regional Supervisor Edward Rideout.⁷⁹

97. At the final round interview, candidates are also asked a series of standard questions, different from the questions asked at the local round of interviews. The two interviewers score each candidate, tally the scores, and rank order candidates based on their aggregate scores.⁸⁰ The final panel is not provided prior rankings from the local round interviews. Accordingly, the local panel's views of the candidates are not considered in any way in determining the final rankings of candidates to be sent to O'Brien.⁸¹

⁷⁸ National Association of Government Employees: Service Employees International Union, Local 5000, Employment Agreement, § 16.03 at 41. A copy of this Agreement accompanies this report as Exhibit 29.

⁷⁹ Testimony of Elizabeth Tavares, July 13 (Exhibit 137), at 18, 38; Testimony of Edward McDermott, August 25, 2010 (Exhibit 116), at 24-27, 33-34; Testimony of Patricia Horne, October 4, 2010 (Exhibit 112), at 38-39; Testimony of William Burke, July 22, 2010 (Exhibit 96), at 49-50; Testimony of Edward Rideout, August 27, 2010 (Exhibit 129), at 59. Relevant excerpts of the testimony of OCC Deputy Director Horne accompany this Report as Exhibit 129.

⁸⁰ Testimony of Edward McDermott, August 25, 2010 (Exhibit 116), at 47-448, 52-53.

⁸¹ October 17, 2006 letter from Chief Justice Mulligan to Commissioner O'Brien, a copy of which accompanies this Report as Exhibit 51.

98. The rank ordering from the final interview panel is provided to Commissioner O'Brien. First Deputy Commissioner Tavares testified that O'Brien always selects the highest ranked candidate for the first probation officer opening in the particular court, and if additional vacancies exist in that court, O'Brien appoints candidates in priority of their rank ordering by the final pane.⁸²

99. In addition, the list of finalists is used to fill additional vacancies appearing within a set period of time, which some witnesses recalled being nine months. As a result, even if a rank ordering was initially created to fill only one position, persons ranking second or lower could eventually be appointed without being required to re-interview.⁸³

D. Associate Probation Officers

100. The qualifications to become an associate probation officer are less than those necessary to become a probation officer. For example, no bachelors degree is required, only a high school degree or equivalent.

101. Hiring for associate probation officers is considerably less rigorous than hiring for probation officers. According to Deputy Commissioner William Burke, typically he and one other individual – normally a chief probation officer or a regional supervisor – performed a round of screening interviews for all applicants for associate probation officer positions. He agreed that as long as the candidate met the minimum qualifications (a high school degree) and was not “blatantly uncooperative,” “vulgar,” or “manifestly unqualified,” these applicants were passed to Commissioner O'Brien for his selection.⁸⁴

⁸² Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 40-41.

⁸³ Testimony of Richard O'Neil, August 3, 2010 (Exhibit 124), at 119-20; Testimony of Francine Ryan, August 9, 2010 (Exhibit 132), at 58-59. Relevant excerpts of the testimony of Regional Supervisor Ryan accompany this Report as Exhibit 132.

⁸⁴ Testimony of William Burke, July 22, 2010 (Exhibit 96), at 22.

102. Regional Supervisor Dianne Fasano, who sometimes sat on these panels with Burke, described the interviews for associate probation officers as a farce:

Q. Did Billy Burke ever provide you with any names?

A. I did interviews with Bill Burke for associate probation officers. And those interviews were -- I don't know how else to describe it other than ridiculous because they were about ten days in a row of people every ten minutes. And at the end we didn't make a list and I don't remember scoring people.

* * *

Q. What was the process for associate PO hires?

A. I don't know what the process was. I know I just sat in interviews ten minutes a person and took notes about their answers. I don't recall any scoring, any listing, any anything.

Q. I take it then you weren't rank ordering any candidates?

A. Not as far as I remember.

Q. And --

A. It would have been impossible to rank.

Q. Just because there were so many of them?

A. Right. And I didn't do all of them so that wouldn't have been fair if I tried to rank people I hadn't even seen.

Q. Did you score them numerically?

A. Not that I remember.

Q. Did you give them a thumbs up or thumbs down vote?

A. Not that I remember.

Q. So separate and apart from perhaps jotting down some notes on these candidates that you were seeing for days at a time, there was to the best of your memory no process of when going down the list of candidates of ranking them or scoring them?

A. No.

Q. How then were associate POs hired?

A. I have no idea. They were hired by OCP and they -- I don't know. I don't know. My understanding is they were hired for a county but then placed in a particular court. But I don't know who picked them or how or how they were informed or anything like that.

Testimony of Dianne Fasano, September 3, 2010 (Exhibit 109), at 102, 104-105.⁸⁵

103. Regional Supervisor Francine Ryan also participated in associate probation officer interviews and testified that the interviews had no bearing on who was hired. She stated that the interviews were ten-minutes long and the interviewers did not rank or score the candidates. At most, a few notes were made regarding the candidates' responses, but no effort was made to compare the candidates. Ryan testified that she had no idea how the decision was made which candidates to hire.⁸⁶

104. After receiving names from the interviewers, Commissioner O'Brien had the option to select any candidate he wanted for associate probation officer positions.⁸⁷ Because the majority of applicants made it past the screening round, O'Brien had, in effect, absolute discretion in naming associate probation officers.

E. Assistant Chief Probation Officers

105. Smaller probation offices consist of a chief probation officer and a discrete number of probation officers. Once an office has reached a certain size, it may designate assistant chief probation officers who function as middle management. The number of assistant

⁸⁵ Relevant excerpts of the testimony of Supervisor Fasano accompany this Report as Exhibit 109.

⁸⁶ Testimony of Francine Ryan, August 9, 2010 (Exhibit 132), at 42-43.

⁸⁷ Testimony of William Burke, July 22, 2010 (Exhibit 96), at 21.

chief probation officers designed in a given court is determined by a formula, with one assistant chief probation officer authorized for every five probation officers assigned to the court.⁸⁸

106. To become an assistant chief probation officer, one first needs to be a probation officer (or a probation officer in charge). The pool of potential applicants is thus far smaller than the pool of applicants for probation officer positions. Accordingly, there is no screening round as there is for probation officer hiring.⁸⁹ Generally speaking, every probation officer in a given court applies for assistant chief probation officer when a position becomes available.

107. As with probation officer hiring, candidates for assistant chief probation officer first must interview at the local level before proceeding to a final round at OCP. And as with probation officer hiring, the panel for assistant chief hiring consists of the First Justice for the particular court, the chief probation officer for that court, and a designee of the Commissioner, commonly the regional supervisor responsible for the county in which the court sits.

108. In many cases, the First Justice of the local court and the chief probation officer of that court are personally familiar with each candidate's strengths and weaknesses based on his or her performance as a probation officer in that court. However, as with probation officer hiring, the procedure is for panel members to rank candidates based on their responses to a series of standard questions provided by First Deputy Commissioner Tavares. Again, the top eight candidates appearing on at least two panel members' lists of top eight are forwarded for a final round interview.⁹⁰

⁸⁸ September 26, 2006 letter from Chief Justice Mulligan to O'Brien. A copy of the letter accompanies this Report as Exhibit 47.

⁸⁹ Testimony of Janet Mucci, June 24, 2010 (Exhibit 121), at 65-66.

⁹⁰ *See, e.g.*, Memorandum from Elizabeth Tavares to the Interview Committee regarding Interview Process for Assistant Chief Probation Officer. A copy of the memorandum accompanies this Report as Exhibit 26.

109. Finally, as with probation officer hiring, the final round interview is held before Deputy Commissioners Wall and Walsh, or on occasion, before one of the Deputy Commissioners and another individual such as Edward McDermott or Edward Rideout. Final round candidates are rank ordered based on their answers to standard questions. O'Brien selects the assistant chief probation officer based on the order of this ranking.⁹¹ The rankings compiled by the local interview panel are not reviewed in this process despite the fact that the local panel often has extensive first-hand knowledge of the applicants.

110. In addition to assistant chief probation officers, some of the larger Probation offices have a first assistant chief probation officer. The process of being promoted to first assistant chief is identical to the process for being promoted to assistant chief.

F. Chief Probation Officers

111. Chief probation officers are responsible for the operations of the Probation Department at each local court, and each court accordingly has only one chief probation officer. There are also chief probation officers assigned in supervisory roles throughout the non-court divisions of the Probation Department, such as Electronic Monitoring.

112. Probation officers, assistant chief probation officers, first assistant chief probation officers, and probation officers in charge may apply for chief probation officer positions. There are additional qualifications for a chief probation officer position, including three years of human services experience, at least one year of management experience (or thirty hours of management training approved by the Commissioner), and a graduate degree (although three years experience as a probation officer can be substituted for this educational requirement).⁹² Typically all

⁹¹ Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 40.

⁹² See, e.g., Job Descriptions and Qualifications for Chief Probation Officer, Salem District Court, posted March 1, 2005. A copy of which accompanies this Report as Exhibit 28.

probation officers, assistant chief probation officers, and any first assistant chief probation officer in a particular court meeting the minimum qualifications apply for a chief probation officer opening.

113. Administrative Order No. 4, enacted in March 1989 by then-Chief Justice for Administration and Management Arthur Mason, establishes the procedure for the hiring of Chief Probation Officers and:

[was] promulgated to bring about a more coordinated approach to the administration of the Probation Service of the Commonwealth and to meet the requirements of the Trial Court in promoting a comprehensive and uniform method for assessing the needs of probation officers and for guiding appointing authorities in the filling of the position of Chief Probation Officer.⁹³

114. Administrative Order No. 4 sets out a three-part process for reviewing an applicant: (1) a review of the candidate's resume; (2) a personal interview; and (3) a written and oral practical exercise.

115. The Order specifically enumerates eleven objective criteria on which a candidate should be evaluated including familiarity with probation standards and laws, knowledge of effective management principles, interpersonal and leadership skills, knowledge of community resources, positive working relationships, and quality of work in previous positions.

116. There is no screening round of interviews for chief probation officers. As with assistant chief probation officers, interviews for promotions to chief probation officer positions take place at both the local and OCP levels. The composition of the interview panels, however, differs.

117. At the local interview level the panel consists of four individuals: the First Justice of the court, another judge from that court, and two designees of the Commissioner, most

commonly the regional supervisor responsible for the county in which the court is located and a deputy commissioner. The interview panel scores each of the candidates' answers to a standard set of questions. Administrative Order No. 4 dictates that only candidates receiving an average aggregate score of 80 or higher from the local interview panel can be referred on to the final round of interviews.

118. The final interview panel for chief probation officers consists of Commissioner O'Brien and the First and Second Deputy Commissioners. During most of the period in question these individuals were First Deputy Commissioner John Cremens and Second Deputy Commissioner Liz Tavares. When Cremens retired and Tavares became First Deputy Commissioner, the third slot on the panel was filled by Deputy Commissioner Francis Wall. As with the other positions discussed above, panel members score candidates on their responses to standard questions, and aggregate and average their scores to determine the top candidate.⁹⁴

G. Community Corrections Centers

1. Probation Officers in Charge

119. Probation officer in charge positions are Probation Department positions, but the probation officers in charge work within Community Corrections Centers. There is at least one probation officer in charge assigned to each Community Corrections Center.⁹⁵ They serve as conduits of information between the Probation Department in OCC and track probationers that are assigned to OCC. Probation officers in charge conduct meetings with those probationers as

⁹³ A copy of Administrative Order No. 4 accompanies this Report as Exhibit 23.

⁹⁴ Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 47.

⁹⁵ Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 23. Relevant excerpts of the testimony of OCC Regional Program Manager Quinn accompany this Report as Exhibit 128.

needed and weigh in on their OCC program assignments as the probation officers in charge deem necessary.⁹⁶

120. Probation officers in charge are supervised by the Probation Department and OCC plays no role in their hiring or oversight. Candidates submit their applications to the Commissioner's Office which prescreens the candidates to determine if they met the minimum qualifications for a probation officer in charge position – two years of work experience as a probation officer and a bachelors degree in a criminal justice-related field.⁹⁷

121. The Commissioner's Office created probation officer in charge positions in late 1999 or early 2000 and undertook a large scale hiring around that time to fill the new positions.⁹⁸ Qualified candidates went through a single round of interviews conducted by Deputy Commissioners Elizabeth Tavares and Francis Wall and Office of Community Corrections Regional Program Manager John Quinn. In a subsequent round of hiring in 2005, the panels consisted of two interviewers, Quinn and either Regional Supervisor Frank Campbell or Regional Supervisor Edward Rideout.⁹⁹

122. During the interviews the panel asks the candidate a set of four standardized questions and scores each response on a scale of 1 through 25. The interview panel scored each candidate immediately following his or her interview, although there was sometimes following discussion among the interviewers.¹⁰⁰

⁹⁶ Testimony of Stephen Price, October 21, 2010 (Exhibit 126), at 91-93. Relevant excerpts of the testimony of OCC Executive Director Stephen Price accompany this Report as Exhibit 126.

⁹⁷ Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 29-31.

⁹⁸ Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 26-27.

⁹⁹ Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 57-58, 59.

¹⁰⁰ Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 33-35, 61-62.

123. At the end of the interview process, the scores for each candidate are averaged to come up with a “total” overall score for each candidate. The individual and composite scores are then sent to the Commissioner’s Office.¹⁰¹

124. The Commissioner selects the person for the probation officer in charge position based on this first and only round of interviewing.¹⁰²

2. Community Corrections Positions

125. The Office of Community Corrections is an independent branch of OCP. Hiring decisions within OCC are made by the Executive Director, subject to the approval of the Chief Justice for Administration and Management. The Commissioner of Probation does not have a role in OCC hiring.¹⁰³ Employees within OCC include those who hold union positions, such as entry level community service positions, court services coordinators, program specialists and administrative assistants, and those who hold non-union managerial positions such as regional program manager, program managers and clinical managers. Generally, those within the Community Service Division are responsible for working with and overseeing individuals assigned to perform community service as part of their probation. The program specialists and program managers are responsible for overseeing the various programs, such as substance abuse programs and testing services, that are run out of the OCC centers.¹⁰⁴

126. The interviewing and hiring process within OCC is not as structured as within the Probation Department, although it is still governed by Section 4.000 of the *Personnel Policies and Procedures Manual*. Candidates submit applications for employment to OCC. OCC has no

¹⁰¹ Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 46-47, 61-62, 74-75, 86, 110.

¹⁰² Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 27-29, 44.

¹⁰³ Testimony of Stephen Price, October 21, 2010 (Exhibit 126), at 91; Testimony of Patricia Horne, October 4, 2010 (Exhibit 112), at 36.

¹⁰⁴ Testimony of Stephen Price, October 21, 2010 (Exhibit 126), at 32-33, 37-40.

personnel director or hiring coordinator, but typically the office manager compiles the resumes. OCC prescreens the candidates to ensure they meet the minimum qualifications.¹⁰⁵ All candidates who meet the minimum qualifications are given an interview.¹⁰⁶

127. Depending on the position and the number of candidates interviewing, there may be one or two hiring panels that ask candidates a set of standardized questions and rank and score the candidates based on their responses.¹⁰⁷ For non-union management positions, there typically is only one round of interviewing conducted by Executive Director Steve Price and Deputy Director Patricia Horne. For union positions, there is typically a preliminary round of interviewing to narrow the field of candidates and then a final round interview conducted by senior management. The union position interview panels may consist of two or three interviewers.¹⁰⁸ Price testified that hiring within the Community Service division of OCC is largely done by the head of that division, subject to his approval.¹⁰⁹

128. In instances where there is more than one interview round, the second interview panel would receive the scoring and ranking information from the candidates' first interview, but that information typically did not factor into the scores and rankings given by the second panel.¹¹⁰

129. Price, as Executive Director, selects the candidate for the position (whether in OCC or within the community service division) based on the ranking and scoring from the interview rounds and submits that name to the Chief Justice for Administration and Management

¹⁰⁵ Testimony of Stephen Price, October 21, 2010 (Exhibit 126), at 54-55.

¹⁰⁶ Testimony of Stephen Price, October 21, 2010 (Exhibit 126), at 55-57.

¹⁰⁷ Testimony of Stephen Price, October 21, 2010 (Exhibit 126), at 57-58, 61-62.

¹⁰⁸ Testimony of Stephen Price, October 21, 2010 (Exhibit 126), at 68-70, 80-82.

¹⁰⁹ Testimony of Stephen Price, October 21, 2010 (Exhibit 126), at 58-61, 86; Testimony of Patricia Horne, October 4, 2010 (Exhibit 112), at 24-25

for approval. If there is more than one round of interviewing, Price typically receives the scoring information only from the final round. Price testified, and Horne confirmed, that he typically selects the candidate with the highest ranking.¹¹¹

H. Hiring within Electronic Monitoring

130. Under Massachusetts law, as a condition of probation and parole judges may require individuals to wear electronic monitoring devices. Such a condition has been mandatory with respect to persons convicted of sex crimes since 2006.¹¹²

131. The Electronic Monitoring (“ELMO”) division of the Probation Department is responsible for overseeing GPS and radio frequency monitoring of offenders. The ELMO division has been monitoring offenders via radio frequency since 2001, and has been monitoring individuals via GPS since 2005. Since 2005, the number of offenders monitored via GPS has increased each year.

132. Independent Counsel questioned Deputy Commissioner Paul Lucci, who is responsible for the Programs Division and ELMO, regarding the interview process for positions within ELMO. At first, Lucci testified that while he assumes there must be interviews and believes that if there are interviews he would be on the panel, he did not remember any interviews ever having occurred. For example, he was unable to recall interviewing the three

¹¹⁰ Testimony of Stephen Price, October 21, 2010 (Exhibit 126), at 78, 82-83.

¹¹¹ Testimony of Stephen Price, October 21, 2010 (Exhibit 126), at 52-53, 62-64, 80; testimony of Patricia Horne, October 4, 2010 (Exhibit 112), at 33-34.

¹¹² M.G.L. c. 127, § 133D ½ (“Any person under court ordered parole supervision or under community parole supervision for life for any offense listed within the definition of ‘sex offense’, a ‘sex offense involving a child’ or a ‘sexually violent offense’, as defined in section 178C of chapter 6, shall, as a requirement of such parole, wear a global positioning system device, or any comparable device, administered by the board at all times for the length of his parole for any such offense.”); GL c. 265, § 47 (“Any person who is placed on probation for any offense listed within the definition of ‘sex offense’, a ‘sex offense involving a child’ or a ‘sexually violent offense’, as defined in section 178C of chapter 6, shall, as a requirement of any term of probation, wear a global positioning system device, or any comparable device, administered by the commissioner of probation, at all times for the length of his probation for any such offense.”).

individuals who serve as his regional ELMO supervisors: Edward Ryan, Kathleen Petrolati (wife of Thomas Petrolati), and Eugene Irwin (son of former Chief Justice for Administration and Management John Irwin).¹¹³

133. Later in his testimony, Lucci amended his response. He stated that while the final decision belongs to Commissioner O'Brien, he does sit on interview panels together with one of the chief probation officers assigned to the Programs Division. During these interviews candidates are asked a standard set of questions provided by Deputy Commissioner Tavares.¹¹⁴ No judges sit on the interview panels for ELMO hiring.¹¹⁵

134. Independent Counsel also questioned ELMO Regional Program Manager Edward Ryan about ELMO hiring practices and procedures. Ryan was similarly unable to provide a clear picture of how ELMO hiring works. Ryan testified that to his recollection, for the time period from 2002-2007, the Commissioner's Office was responsible for hiring within ELMO. Ryan believes that he sat on one or two interview panels with someone from the Commissioner's Office.¹¹⁶

I. Other Hiring

135. OCP also oversees the hiring of all administrative and training staff within the Probation Department. Hiring for these positions, like hiring for probation officers, is governed by the *Personnel Policies and Procedures Manual*.

136. For the administrative positions, more discretion is given to the individual probation offices, although all hires still must be approved the Commissioner's Office.

¹¹³ Testimony of Paul Lucci, August 23, 2010 (Exhibit 114), at 38-42.

¹¹⁴ Testimony of Paul Lucci, August 23, 2010 (Exhibit 114), at 60-62.

¹¹⁵ Testimony of Paul Lucci, August 23, 2010 (Exhibit 114), at 70-71.

¹¹⁶ Testimony of Edward Ryan, June 29, 2010 (Exhibit 131), at 105-109.

Typically interviews are conducted only at a local level with the chief probation officers generating a list of the top candidates.¹¹⁷

137. Hiring for positions within the Training Academy consists of a single round of interviews conducted by a two-person interview panel. No judge is assigned to these interview panels because Training staff do not work in the courts.¹¹⁸

J. Hiring Freezes and Acting Positions

138. From time to time during Commissioner O'Brien's tenure, hiring freezes have been ordered by AOTC. Based on the Probation Department's interview records and witness testimony, it appears that such freezes were in place from January 2001 – November 2004, from May 2005 – June 2005, April 2007 – May 2007, August 2007 – October 2007, and since October 2008.

139. During such a hiring freeze, new probation officers and associate probation officers cannot be hired, and no permanent promotions can be made to assistant chief probation officer, first assistant chief probation officer, or chief probation officer positions.

140. During these freezes, some chief probation officers retire or leave the Probation Department. Because it is necessary for each court of a certain size to have a chief probation officer, a practice has developed of appointing "acting" chief probation officers.

141. The process to designate an acting chief probation officer during a hiring freeze is not the same as the process used to appoint chief probation officers. In particular, there are no interview panels and no interviews prior to the selection of an acting chief. First Deputy

¹¹⁷ Testimony of Michael LaFrance, September 29, 2010 (Exhibit 113), at 23-24, 26, 94. Relevant excerpts of the testimony of Chief Probation Officer LaFrance accompany this Report as Exhibit 113.

¹¹⁸ Testimony of Stephen Bocko, September 13, 2010 (Exhibit 94), at 87.

Commissioner Tavares and former First Deputy Commissioner Cremens testified that, to the best of their memories, O'Brien simply selects someone to fill the acting position.¹¹⁹

142. According to Tavares, the Commissioner asked others in OCP for advice before filling some positions.¹²⁰ In most instances, O'Brien selected the assistant chief probation officer or first assistant chief probation officer in the particular court for the acting chief position.¹²¹

Tavares, however, testified that on one occasion O'Brien selected a probation officer in charge as acting chief, rather than the assistant chief probation officer, after he received a call from "the Senate President" in support of the probation officer in charge.¹²²

143. In practice, "acting" chief probation officers have an advantage when later applying for the permanent position. In December 2004, the acting chief probation officers in two courts in Bristol county were both selected to be chief probation officers following a hiring freeze.¹²³

III. MANIPULATION OF THE INTERVIEW PROCESS

A. Introduction

144. As set forth above, the Probation Department, in a seeming effort to comply with the dictates of the *Policies and Procedure Manual* of the Trial Court that the "most qualified individuals" be selected for employment "solely on the basis of merit," established extensive procedures around hiring and promotions. Pursuant to these procedures, many thousands of candidates were interviewed and ranked in order to fill positions within the Department. Judges,

¹¹⁹ Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 126-27; Testimony of John Cremens, August 6, 2010 (Exhibit 102), at 20.

¹²⁰ Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 127.

¹²¹ Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 126-27.

¹²² Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 129.

¹²³ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 28-30.

Department employees, and applicants spent countless hours and dedicated substantial resources to preparing for and participating in such interviews.

145. The interview procedures used by Probation to hire and promote were, however, in large measure a façade and a sham. The evidence is unambiguous that for most open positions, interviewers at each stage of the hiring process were provided the names of one or more candidates favored by Commissioner O'Brien with the direction that the favored candidates be given preferential ranking and/or scoring. These names were provided by First Deputy Commissioner Liz Tavares, Deputy Commissioner Francis Wall, Human Resources director Janet Mucci, and Regional Program Manager Edward Ryan. The preferred names came directly from O'Brien.

146. For the most part, interviewers in preliminary interview rounds complied with the order to select favored candidates for the next round interviews. Regional Supervisors admitted increasing the scores or rankings of favored candidates to ensure that the favored candidates made it to the next round of interviews. This occurred even where it meant another, more qualified candidate did not. Participants in the final round of interviews for different positions – including Deputy Commissioner Cremens with respect to the promotion of chief probation officers, and Edward McDermott with respect to the hiring of probation officers – admitted that they scored favored candidates higher than they would have if such candidates had not been identified to them as favored by O'Brien, so that O'Brien could claim that he chose the highest ranked candidate.

147. This process lent a fraudulent air of objectivity and fairness to what was in reality a rigged process of patronage hiring.

B. O'Brien's Identification of Preferred Candidates

148. With limited exceptions involving Representative Petrolati, O'Brien was the person who determined the candidates on behalf of whom the hiring and promotion process would be rigged.

149. Deputy Commissioner Christopher Bulger testified that O'Brien admitted, in a conversation with Bulger that occurred during the pendency of the investigation, that he had passed names of preferred candidates to interviewers:

Q. The commissioner has told you that he passed along names to interview panels prior the interviews; is that correct?

A. Yeah. He passed names along to the interviewers and I presume it would be before. I presume it was before an interview.

Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 43.

150. First Deputy Commissioner Liz Tavares and Deputy Commissioner Francis Wall were at the center of the process and were the individuals to whom O'Brien most frequently gave the names he had selected.

151. Tavares, a lawyer, testified extensively to the fraud and her role in receiving names of favored candidates directly from O'Brien:

Q. ... [D]id you ever have conversations with Commissioner O'Brien about persons that he wanted to make it through the screening interview process and the local interview process so that they could get to the [final] round of interviews?

A. Yes, the Commissioner informed me that he had received recommendations from certain individuals.

* * *

Q. So describe for us the conversations you had with the Commissioner.

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A. The Commissioner would say, so and so, John Smith was recommended, see if you can – see if you can contact the local level and see if they can advance that person to the final round.

* * *

A. ... I mean, he just provided me with people that were recommended and instructed me to call the local RAs [regional administrators] involved in the interview process and see if we could move these folks along.

Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 55-56, 59, 62-63.

152. According to Tavares, she was given names by O'Brien in "more than a majority" of cases.¹²⁴

153. As an example, Tavares described her conversation with O'Brien concerning Brian Mirasolo, the son of an aide to House Speaker DeLeo, who is currently a chief probation officer in the Programs Division:

Q. So a Speaker of the State House of Representatives gave Brian Mirasolo's name to Commissioner O'Brien?

A. I believe so.

Q. And then what did Commissioner O'Brien communicate to you concerning Brian Mirasolo?

A. That he was recommended and contact the local level to see if we could move him to the next round.

Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 60.

154. She also recalled O'Brien identifying James Rush, the father of State Representative Michael Rush, as a preferred candidate for a chief probation officer position in the West Roxbury division of the Boston Municipal Court:

Q. ... would the Commissioner tell you the names of the people that he was receiving recommendations from?

¹²⁴ Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 113.

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A. Who recommended a particular candidate when he gave me the name of the candidate?

Q. Right.

A. Yes, he would.

Q. And who was he receiving recommendations from?

A. I know that – let me think back. It's been a while since we've done Chief Probation Officer positions. I know that when we did West Roxbury, I think the Assistant Chief Probation Officer, Jim Rush was recommended by his son, Representative Rush.

Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 117.

155. Similarly, Deputy Commissioner Paul Lucci testified that he received names of favored candidates directly from Commissioner O'Brien.¹²⁵

156. Edward Ryan testified that on numerous occasions he received the names of favored candidates from the Commissioner:

Q. Did you ever make calls before the interview and say, make sure these candidates are on the list?

A. I may have.

Q. When you say you may have, do you remember that you did do that?

A. I don't remember specifically, but I'm sure I did.

* * *

Q. Did you transmit the names of the final few candidates to Walsh and Wall for the last and final interview, or were those names given only by Mr. O'Brien to Wall and Walsh?

A. He could have given them to me to give to Ms. Walsh and Fran Wall.

¹²⁵ Testimony of Paul Lucci, August 23, 2010 (Exhibit 114), at 63-64.

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Testimony of Edward Ryan, June 29, 2010 (Exhibit 131), at 86; July 15, 2010 (Exhibit 131), at 213-14.

157. O'Brien gave names of favored candidates to Edward Ryan to pass along to Wall and Walsh to ensure that those favored candidates made it back to him on the final list from which he selected the person for the position.

Q. It was always the Commissioner who made that decision, and sometimes, as I understand you, he gave the names directly to Wall and Walsh; other times, he may have asked you to give the names?

A. Sure.

Q. What did you understand the names being given to Wall and Walsh to be? They were obviously the finalists, and one or more of them was to be selected for the position in question, correct?

A. Yes.

* * *

Q. ...When you say you don't know what Wall and Walsh did, you know that the Commissioner had already chosen names that were to go to Wall and Walsh and that what was then going to happen was an interview process, correct?

A. Yes.

Q. So the people who came out of that interview process for a final selection were names which Mr. O'Brien had already put into the process, correct, through Wall and Walsh?

A. Yes.

Q. So he knew that the names from which he would make final selection were the very people that he had already given to Wall and Walsh; one of them or more was ultimately going to get the job?

A. Yes.

Testimony of Edward Ryan, July 15, 2010 (Exhibit 131), at 214-217.

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158. O'Brien on several occasions provided the names of favored candidates to Janet Mucci, his director of personnel. Mucci repeatedly denied receiving names from O'Brien during her informal interview and under oath on June 24, 2010:

A. So yeah, I firmly believe I did not give names.

* * *

A. I did not pass any names on.

* * *

A. ... But prior to the interview, I swear, I never was the person doing it.

* * *

A. But I didn't hear the names; I don't have the names.

* * *

A. No, not me. I wouldn't be the one to do that, no.

* * *

A. ...But me telling them to put somebody on a list, I don't think I've ever done that. I'm positive I've never done that. ... But for me to be the one communicating the name to them, no, that's not me; that wouldn't be me. I'm positive I never did that.

* * *

A. ...[Commissioner O'Brien] wouldn't even think of coming in to have me make that call

* * *

A. Oh Lord, no, no.

Testimony of Janet Mucci, June 24, 2010 (Exhibit 121), at 43, 44, 46, 48, 67-69.

159. Only in subsequent testimony on October 5, 2010, after being confronted with recordings of messages she left at the home of a regional supervisor, did Mucci concede that O'Brien had given her names of favored candidates:

- Q. So you're satisfied that on this occasion you in fact gave names of proposed finalists to Mr. Dalton or to his voicemail, is that correct?
- A. Absolutely. Yeah. I can tell by what I'm saying that I'm absolutely doing that, yes.
- Q. Where did you get the names?
- A. It had to be from Jack [O'Brien]. He would be the only one that would give me names.

Testimony of Janet Mucci, October 5, 2010 (Exhibit 121), at 161-62.

160. Moreover, the recordings are explicit that O'Brien expected the regional supervisor to find a way to advance O'Brien's candidates:

I'll talk about Falmouth. I won't give them to you right now because it's so far off, but there's one, two, three, four, five, there's 6 people to be finalists in Falmouth for this one job, so the only thing I can think of, as I said to him, the only thing that's going to bail these guys out on this is if they tie people. So, we'll talk about those 6 people but [*whispering*] if you can only come up with 8 numbers, maybe you got a whole bunch tied for eight, or 6 or 7, gonna have to do something like that to accommodate these things because he had a meeting at the State House yesterday and he has no choice.

* * *

But I would say when you're going through these if you have any problem getting any of them on, [*whispering*] I'd, I'd pick up the phone to call, call I don't know what to tell you ... [*inaudible*] Burke, to call Paul, I don't know. But he's real insistent that these people be there, see I know that makes it really tough. If Rita would at least go along with putting on 2 out 3, I guess you can get them on somehow by that, but if you think anybody's not going to

make it, I'd [whispering] pick up the phone and call. I don't know, I don't know what else to tell you to do.¹²⁶

161. Former First Deputy Commissioner John Cremens recalled at least one occasion in which he was present in O'Brien's office, and overheard O'Brien pass along a list of names of individuals to whom a "good look" should be given, which he interpreted to be a list of individuals who should make the list of finalists.¹²⁷

162. Finally, individuals also testified that they received names from Wall, with the explanation from Wall that he had obtained the names from the Commissioner.¹²⁸

C. O'Brien Was Communicating Instructions, Not "Recommendations"

163. Some witnesses from whom Independent Counsel took testimony described what they received from OCP as a "recommendation" for a particular candidate, a euphemism for an instruction from O'Brien. The process put in place by Commissioner O'Brien was not one in which "recommendations" were communicated to interview panel members for their consideration with other pertinent information, such as the candidates' performance during interviews and work experience. Rather, O'Brien was issuing instructions which candidates to score or rank most highly, instructions that could be disregarded only with respect to the most unqualified candidates.

164. As an initial matter, if the Commissioner intended simply to convey to the interview panel that a particular candidate came highly recommended, one would expect that recommendation to have been shared with the judges who sat on the local interview panels. That

¹²⁶ Voicemail recordings (Exhibit 31).

¹²⁷ Testimony of John Cremens, August 6, 2010 (Exhibit 102), at 43-44.

¹²⁸ Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 93-95; Testimony of Edward McDermott, August 25, 2010 (Exhibit 116), at 30; Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 58-59; Testimony of Nicholas DeAngelis (Exhibit 104), August 24, 2010, at 42; Testimony of William Burke, July 22, 2010 (Exhibit 96), at 45. Relevant excerpts of the testimony of former Regional Supervisor DeAngelis accompany this Report as Exhibit 104.

did not happen. Regional supervisors whom we interviewed typically testified that they did not share names of sponsored candidates with the judges on their interview panels.¹²⁹

165. Moreover, for a “recommendation” to have any value, the person receiving the recommendation would need to know the basis for the recommendation. A “recommendation” from someone who has no knowledge of the candidate’s work experience, ethic, or ability is essentially worthless. Even more worthless is a “recommendation” for which even the identity of the sponsor is not provided.

166. First Deputy Commissioner Tavares testified that typically none of the information regarding a recommendation was shared with her, let alone with the panel members:

Q. So all you and the Regional Supervisor know are that these are the names the Commissioner has received recommendations for but not anything else about why that recommendation should be given any weight in the interview process?

A. That’s true.

* * *

Q. Were there instances in which you did have additional information about the individual and why the Commissioner wanted to see them passed through?

A. Why? No. I mean, at times he would tell me who recommended the person, but that wasn’t consistent when I passed the names down to the Regional Supervisors.

Q. Would you tell the Regional Supervisors who the recommendation was coming from?

¹²⁹ Testimony of Brian Murphy, August 13, 2010 (Exhibit 123), at 96; testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 73, 83; testimony of Dianne Fasano, September 3, 2010 (Exhibit 109), at 53; testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 136; *but see* testimony of Richard O’Neil, August 3, 2010 (Exhibit 124), at 133 (“Q. Is this one of the instances where you shared the name you were given with the Chief and the judge prior to the interview process? A. Yes.”); testimony of Nicholas DeAngelis, August 24, 2010 (Exhibit 104), at 55 (“...if I knew the judge I would just say, ‘hey, look, these three people or these four people have to make the list.’”). Relevant excerpts of the testimony of Regional Supervisor Murphy accompany this Report as Exhibit 123.

A. No.

Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 69, 71.

167. Consistent with Tavares' testimony, witnesses consistently stated that they were never told why particular candidates had been "recommended" or by whom.

168. This was not lost on the interview panel members. Regional Supervisor Dianne Fasano, for example, noted the distinction between recommendations she might receive from persons with first hand knowledge of a candidate, and the instructions she received from OCP:

Q. Going back to the calls you were getting from other individuals not in OCP, how did you treat those calls? Were those also names that you thought had to make it through or were they simply recommendations?

A. No. No. I think those were different. Those were people that were -- had personal knowledge of people's work and abilities and things of that nature. And it was never like you have to do this or you have to do that. It was more just a, you know, a more personal thing and it was more related to their work.

Q. And I guess in contrast to people who were conveying personal recommendations based on their experience with or knowledge of a particular candidate, you're also receiving, I guess, calls from Miss Tavares and Mr. Ryan who were essentially providing you names that you were instructed to pass along to the next round?

A. Yes.

Testimony of Dianne Fasano, September 3, 2010 (Exhibit 109), at 39; *see also* Testimony of Anthony Sicuso, September 30, 2010 (Exhibit 134), at 52-54 (testifying that during grievance proceedings, recommendations that lacked substance were "not relevant" and would not be given any weight).

169. The Commissioner's Office received letters of recommendation, some of which (including letters from legislators) reflect first hand knowledge of the candidate of a kind that

might be useful in evaluating the recommendation. However, there is no evidence that such letters played any role in the Commissioner's identification of candidates whose names he provided to interview panels.

D. The Screening Panels

170. Tavares admitted during her testimony that she took the names of favored candidates from Commissioner O'Brien and, in turn, provided them to the regional supervisors conducting screening level interviews for probation officer positions, thus injecting the fraud into the first stages of the hiring process:

Q. Did this happen at the screening level, too; were names given to the two individuals who were conducting the screening interviews of folks that the Commissioner wanted to see make it through to the local interviews?

A. Yeah, at the basic level, he got recommendations, and we provided names.

Q. Were you the person who provided names to the people on the screening panel?

A. Yes.

Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 105.

171. Both Regional Supervisors Rios and Campbell confirmed that they received names of favored candidates from OCP with the understanding that every effort should be made to rank these individuals so that they successfully passed from the screening panel through to the next round of interviews.

172. Regional Supervisor Campbell testified that when the screening round of interviews was first established, he was provided an overview by Tavares of how that round of interviews was to be conducted. He was told by Tavares that he was going to be given names of favored applicants:

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- Q. So in 2005 you were new to the screening interview process –
- A. Yes, I was.
- Q. – and Liz Tavares was providing you an overview of how it would work. Is that accurate?
- A. Yes, I was totally new to it. I had never done any screening interviews as you’ve described.
- Q. And so as part of this overview that Liz Tavares was providing you, as I understand it, she mentioned that she may be providing names of recommended candidates to you?
- A. Yes.
- Q. Did she say that in so many words? Did she say I’ll give you the names of recommended candidates?
- A. Yes, she did, yes.

Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 52.

173. As Tavares told Campbell she would, she provided him with lists of “recommended” candidates prior to his conducting rounds of screening interviews. The message that accompanied the list of names was to give these candidates a “good look”:

- Q. And putting aside receiving letters from personnel, did anyone within OCP ever provide you a list of names of recommended candidates?
- A. Well, when you say a list of recommended candidates, names were presented. Recommended candidates were presented to me, yes.
- Q. And what do you mean by that? When you say recommended names were presented to you, just flesh that out for us.
- A. I would be asked to give a recommended candidate. Oftentimes the expression would be used to please try to give this candidate a good look.

Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 43-44.

174. Campbell further testified that he shared these lists of names with Regional Supervisor Rios prior to their conducting screening interviews.¹³⁰ Rios confirmed in her testimony that she received the names of favored candidates from Campbell.¹³¹

175. In passing along the list of “recommended candidates” to Campbell, Tavares and Ryan did not pass along any information concerning who had recommended the candidates or why. Campbell was provided no basis to weigh the strength or value of the “recommendation.” Campbell was just told that the candidates were “recommended”:

- A. ... I wouldn't know where the recommendation came from. It could come from anywhere. I have no knowledge of that. I don't ask. I feel it's none of my business, quite honestly. I just do what I'm told to do.

Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 50-51.

176. In receiving these names, Campbell understood that the real message he was receiving was to rank the “recommended” candidates higher than they merited based on their answers to the standard questions asked of all candidates:

- Q. ... My question is simply, did you understand that the reason Liz Tavares and Ed Ryan were giving you these names and saying to give them a good look was that they hoped or expected that that would cause you to put them through to the next round even if they maybe otherwise would not –
- Q. – have made it through to the next round?
- A. And I attempted to respond by saying I think that any reasonably intelligent person would draw the same inference, sir.

* * *

¹³⁰ Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 62.

¹³¹ Testimony of Nilda Rios, August 4, 2010 (Exhibit 130), at 94.

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- Q. But at the time you're saying you gave no thought to what message they might be trying to communicate by giving you these names?
- A. I can't honestly give you an exact recall of what I thought, quite honestly, on a given day when names were presented to me, other than that obviously if a name was being presented to me, somebody was interested in that recommended candidate. Obviously. Again, that's virtually almost a no-brainer.
- Q. That is a no-brainer. And it is also a no-brainer that by telling you of the interest in that person, they were hoping it would be more likely that you would score that person high enough that they would get through to the next round?
- A. Well, you used the word "hope." I guess that would be my understanding.

Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 56-57, 78-79.

177. Regional administrator Rios, who sat on the screening interview panels with Campbell, testified that she received names of preferred candidates in conversations with Deputy Commissioners Tavares and Wall with the understanding that they were to advance to the second round even if they did not deserve do so:

- Q. During your involvement [in] hiring, were you ever given names of individuals who were supposed to make it onto the next round of interviewing?
- A. Yes.
- Q. How did that happen?
- A. Someone might tell me verbally or someone might leave a list in my mailbox.
- Q. Who would you speak to if it was given to you verbally? Who would have communicated the names to you?
- A. I believe – well, different people at different times, but I think Fran Wall, probably; Liz Tavares, probably.
- Q. Would they contact you?

A. Yes.

Q. And assuming it's a phone conversation, what would they say?

A. Just that so and so should make it on the list.

Q. What did you understand that to mean?

A. Put their name on the list.

Q. That the person would be put on the list of candidates to advance to the next round?

A. To the second round, yes.

Testimony of Nilda Rios, August 4, 2010 (Exhibit 130), at 76-77.

178. Rios also received lists of preferred candidates in writing from Edward Ryan, with the same expectation that she would advance the preferred candidates to the second round interviews:

Q. What would Eddie Ryan tell you?

A. Wouldn't tell me anything. Just leave the list and say, these folks would make it to the second round.

Q. It was your understanding that those people were, regardless of their qualifications, to make it to the next round of interviewing?

A. Yes.

Testimony of Nilda Rios, August 4, 2010 (Exhibit 130), at 78.

179. Rios unambiguously stated that she too carried out the fraud by advancing O'Brien's candidates through the screening round of interviews, even if they were not deserving candidates:

Q. Was it your understanding that they were to advance to the second round regardless of whether or not they would have otherwise been ranked in the top ten to make it to the next round?

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A. Yes.

Q. Did you do that?

A. Yes.

* * *

Q. How successful would you say you were in putting people onto the next round whose names you had been given by the Commissioner's office?

A. I don't understand the question. I mean, you were told to put a name on; you put the name on.

Q. So, in every instance where you were given a name, it then made it onto the list of candidates to be advanced to the next round?

A. I believe so.

Testimony of Nilda Rios, August 4, 2010 (Exhibit 130), at 77, 81.

180. Campbell testified that his receipt of names from Tavares and Ryan caused him to "subconsciously" provide higher rankings to favored candidates, but resisted admitting that he did so intentionally :

Q. So is it accurate that your testimony today has been that you never gave candidates at the screening round of interviews more points than you would have if you have not been given their name by Liz Tavares or Ed Ryan?

A. On occasion, if I'm understanding how you're framing your question or summarizing my responses earlier, on occasion that's not accurate. Obviously, if I was asked to give consideration or to give a candidate a good look, it's very possible that entered into it. For me to actually tell you on a given day or at a given time or a given interview with a given candidate that I can recall what the stream of consciousness was going on in my mind at the time, but it's quite possible and more than likely that if a candidate's name was presented to me to give that candidate a good look, it already had some kind of impact on my objectivity.

* * *

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I would have to – I can't feel that I'm responding honestly to the question if I didn't suggest that it must have had some kind of bearing on my objectivity. Obviously. Anytime a name is mentioned, it's very difficult to be completely objective. But if you knew that there was a certain interest in a candidate, I'm sure it had a bearing on how I would score or view that candidate's articulation or response to a particular question

* * *

- Q. Did you ever consciously decide to provide additional points to a candidate because that person's name had been given to you by Liz Tavares or Ed Ryan prior to the interview?
- A. It's quite possible I may have. It's a long time. We're going back almost five years ago in some instances, at least four and a half years or more. I quite possibly did. I very well may have.

Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 80-82.

181. Rios, however, testified that the scores of preferred candidates were fraudulently inflated, and that Campbell was a knowing participant in it. She testified that after she and Campbell separately scored the candidates (taking into account their preferred status), they checked to see if the favored candidates had high enough scores to be advanced. If the favored candidate did not, they fraudulently changed the scores of the favored candidate:

- Q. When you had candidates who were preferred who had to make it onto the next round, was it your practice that you would keep that in mind as you were scoring them initially, or did you more resolve it on the back end, just interview everyone normally and, if people didn't make it, then try to shift them around to get them into the top ten?
- A. I probably would have tried to keep it in mind as I was scoring them.
- Q. So your initial scoring may have scored them higher than they normally would have based on their merit if they were a preferred candidate?

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A. Probably.

* * *

Q. If you were given names and either you informed your co-interviewer that these were the names to make it through or they were given names on their own, did you discuss at all how you were going to get this person through to the next round?

A. No, you scored all the people and then, if the person didn't score high enough, you gave them a, you know, one or two points, whatever it is, to get them on the list.

* * *

Q. ... If you had an individual whose name you were provided as someone who had to make the list for the next round, and assume you had ten spaces and they were 15th, based on your initial combined scoring, what would you do in order to get them on to the top ten?

A. Just raise their score.

Testimony of Nilda Rios, August 4, 2010 (Exhibit 130), at 99-100, 94-96.

182. Based on the unambiguous testimony of Rios, and Campbell's tortured effort to avoid admitting that he deliberately inflated scores, Independent Counsel concludes that Campbell's denial of ever awarding bonus points or rescoring candidates is not credible.¹³²

183. Campbell testified that he and Rios did not always put the favored candidates through to the next round – sometimes the candidate's performance at the interviews was so poor that putting them through could not be justified.

184. On at least some occasions when that occurred, Campbell told us that Tavares became "disappointed" and "upset" with Campbell.

A. I recall on at least one, there may have been two occasions, where a candidate wasn't recommended on to the next round and Liz was disappointed.

¹³² Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 83-84.

* * *

Q. Disappointed because you didn't get the job done?

A. Well, I don't know. It appeared that she viewed it that way. And if that be the case, you know, you can't get a hundred percent all the time. I'll take 97 and live with it very comfortably. So without a doubt in my mind, knowing her as well as I do, and my association or affiliation with Liz is only professional, but just based on the way she presented her demeanor and her expression, I could tell that she was disappointed; upset. She seemed to be upset.

Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 57, 59.

185. In addition to Campbell and Rios, screening panel member Richard Bracciale was subpoenaed concerning the screening panel practices. Bracciale invoked his right to remain silent and refused to testify. Attempts to locate and subpoena Bracciale's partner on screening panels, Kevin Cunniff, have been unsuccessful.

E. The Local Interview Panels

1. Introduction

186. Names of favored candidates were also provided to the local interview panels considering candidates for associate probation officer, probation officer, assistant chief probation officer, and chief probation officer positions. Each of the regional supervisors sitting on local interview panels testified that he or she received the names of favored candidates from OCP.

187. As with the screening panel, OCP's goal in providing names of preferred candidates to the local interview panels was to have those candidates scored or ranked high enough to proceed to the next, in this case final, round of interviews. First Deputy Commissioner Tavares was quite clear:

Q. ... So long as somebody was in some sense qualified, even if they really weren't one of the best eight people who

interviewed that day, if they got a recommendation, then you should list their name among the top eight?

- A. If they were responsive and two committee members agreed, yes.

Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 102.

2. Interference Prior to 2001

188. Despite the fact that the presiding justice had the authority to select the candidate for positions prior to the statutory change in 2001, there were early attempts by Commissioner O'Brien to influence the hiring process. In 2000, Janet Mucci, Human Resources Director for the Commissioner's Office, left a series of messages on the home answering machine of Regional Supervisor Edward Dalton, *infra* at ¶ 221, providing names of candidates to advance to the second round of interviewing. Dalton testified that he did, in fact, provide names to others on the regional panels on which he served during this time period.

189. Jill Ziter, Regional Coordinator for the District Court (and identified in Mucci's messages), testified that during the process of interviewing for probation officer positions in 2000 or 2001, the representative from the Commissioner's Office, probably Francis Wall, expressed annoyance with her ranking all candidates on the merits. Ziter testified that Wall was unhappy because she had not given a high enough ranking to a candidate to whom he asked her to give "consideration." Ziter believed that Wall was either going to change his scores or, if he had not yet scored the candidate, he was going to do so in a way to get the result he wanted.¹³³

In a memorandum to Jerry Berg, who held a high ranking position in the District Court Department, Ziter detailed this incident:

In Wareham, the Commissioner's representative [Francis Wall] waited until the other lists were complete, asked for a copy, and

¹³³ Testimony of Jill Ziter, September 23, 2010 (Exhibit 140), at 25-28, 33-34.

then created his list based on his ‘crunching’ the numbers around my list. That way he technically created his own list, but it was not based solely on his ranking of the candidates. Instead it was created to undermine my list and resulted in bumping off my highest ranked candidate in order to reach his candidates. In fact, the candidate that was eventually hired in Wareham did not make the actual ranked list, but was added on, according to policy so I’m told, because she was an existing PO in another court.

A copy of Ziter’s January 30, 2001 memorandum accompanies this report as Exhibit 61.

190. Ziter also testified that while on other occasions individuals from the Commissioner’s office requested “consideration” for a candidate, it was never raised during the post interview discussions.¹³⁴ Ziter testified that she understood the Commissioner’s representatives to be telling her to place selected candidates on the list of finalists:¹³⁵

Q. Recognizing you probably don’t remember the exact words, what was essentially the substance of what you were asked to do?

A. My understanding was they were asking, the commissioner’s office was asking for consideration of certain candidates so that those individuals would make it on to the final list of the top eight or ten that could be advanced to the next level.

Q. Was it your understanding that you were essentially being asked to put those recommended candidates in the group of top eight or ten to advance them further?

A. Yes.

Q. In other words, regardless of the individual merit or the relative merits of that particular candidate, you took give consideration to that particular candidate to really mean, hey, move them along to the next round and that’s what the commissioner’s office wants to see; is that your understanding?

A. That was my understanding, yes.

¹³⁴ Testimony of Jill Ziter, September 23, 2010 (Exhibit 140), at 28-29, 36-37.

¹³⁵ Testimony of Jill Ziter, September 23, 2010 (Exhibit 140), at 28-29.

Q. This was also in the 2001 time period; is that correct?

A. Yes. It was either in 2000 or 2001, yes.

Testimony of Jill Ziter, September 23, 2010 (Exhibit 140), at 28-29.

191. Ziter also testified that the other District Court Regional Coordinators reported similar incidents.¹³⁶ The regional coordinators brought the issue to the District Court administration and the judges.¹³⁷ She and her colleagues were instructed by the Chief Justice of the District Court to honestly and fairly rank the candidates.¹³⁸ However, Ziter explained that she believed the chief probation officers sitting on the interview panels felt pressure to advance the candidates the Commissioner's Office requested:

Definitely in general conversation with my colleagues it was my impression that the chief probation officers felt pressured to give consideration to the commissioner's or the commissioner's office's choices. The person sitting on the panel sitting next to them was their supervisor and that was the person saying we're asking consideration for a certain candidate. It was my impression that they felt pressured to comply and that they were looking to the regional coordinators to rank people or candidates according to merit and that the chief probation officers wanted good candidates ranked and were relying on us to assist in that process.

Testimony of Jill Ziter, September 23, 2010 (Exhibit 140), at 73.

3. Testimony of Ellen Slaney

192. Regional administrator Ellen Slaney provided contemporaneous, type-written and hand-written notes concerning the rigged hiring process.¹³⁹ These included note cards on which she had written the names of many favored candidates that she had received as she received

¹³⁶ Testimony of Jill Ziter, September 23, 2010 (Exhibit 140), at 30-31, 35-36.

¹³⁷ Testimony of Jill Ziter, September 23, 2010 (Exhibit 140), at 41-43, 45-46.

¹³⁸ Testimony of Jill Ziter, September 23, 2010 (Exhibit 140), at 31.

¹³⁹ A set of Ellen Slaney's notes, marked during her testimony as exhibit 5, accompanies this Report with the excerpts of that testimony, Exhibit 135.

them.¹⁴⁰ Slaney began creating the notes in 2004 because she feared retaliation over the hiring process and wanted to have her facts straight in case that happened.¹⁴¹ Slaney's notes and testimony paint a portrait of corruption sponsored by O'Brien and his deputy commissioners to implement and enforce a sham hiring process.

193. Slaney advised that the first instance in which she was provided the name of a favored candidate was in December 1999 or 2000. The incident involved Doug MacLean, the son of former Senator William "Biff" MacLean.

194. According to Slaney, she was provided MacLean's name sometime prior to the interview. MacLean then volunteered during his local round interview before Slaney that he had been incarcerated. For this reason, the local interview panel did not list him among candidates to refer to the final round interview.¹⁴²

195. Thereafter, O'Brien angrily demanded to know from Slaney why MacLean had not made the final list, and "offered" to relieve Slaney of hiring responsibilities if she did not go along with his instruction. Slaney accepted this "offer":

- Q. And as best you can recall, what conversation did you have with the Commissioner concerning this round of hiring?
- A. He was – seemed physically upset with me. When I went in, I got called into his office, and he wanted to know why I hadn't put Doug M[a]clean's name on the final list.
- Q. And what did you say in response?
- A. That I didn't think he was an appropriate candidate because he was a convicted felon and that I thought my position was one to make sure the best candidates got the job, and I

¹⁴⁰ A set of Ellen Slaney's note cards, marked during her testimony as exhibit 4, accompanies this Report with the excerpts of that testimony, Exhibit 135.

¹⁴¹ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 20-22, 162.

¹⁴² Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 14-19.

didn't think he was the best candidate or an appropriate candidate.

Q. What was said next in this conversation, as best you can recall?

A. ... And I told him that I thought that having the names ahead of time was unethical, and I felt that it was cheating and that I couldn't do that. And he eventually told me that he understood and that he would not insist that I continue to be on the hiring panels if I did not want to do it, and I said I did not.

Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 18-19.

196. Despite Slaney's removal from hiring, she was, following the lifting of a hiring freeze that had lasted from 2001 until the end of 2004, again assigned to hiring panels (probably by mistake). Slaney testified that she was not provided names with respect to the first two rounds of local panel interviews that she conducted.¹⁴³

197. In February 2005, however, Tavares provided Slaney the names of certain candidates for an opening in the Dedham District Court, explaining that "the Commissioner had an interest in having these names appear on a second round of interviews."¹⁴⁴ Slaney also produced an index card on which she had contemporaneously recorded the names she was provided by Tavares.¹⁴⁵

198. Based on her earlier experience involving MacLean, Slaney testified that she viewed this as an instruction to make sure the favored candidates appeared on the list of finalists:

Q. Did you understand that to mean that you should try to get them onto the round -- onto the list for the next round of interviews even if ordinarily they wouldn't make the cut according to your standards?

¹⁴³ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 21, 29-30.

¹⁴⁴ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 36.

¹⁴⁵ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 54-55.

A. Yes.

Q. Did you ever obtain confirmation of that understanding from either Liz Tavares or from the Commissioner?

A. Well, for example, you know, to go back to the 2000 Doug M[a]clean entry, I think that sort of was confirmation that those names had to be on the list, and it wasn't an option.

Q. So, in 2005 when Liz Tavares was giving you names that the Commissioner had an interest in, you understood that you were supposed to try to get them on the list even if they ordinarily wouldn't make the cut, based on your earlier conversation with the Commissioner back in 1999 or 2000 concerning Doug Maclean, is that right?

A. That's right.

Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 36-37.

199. Slaney stated that after receiving these names, she shared them with the chief probation officer sitting on the interview panel, Rita McCarthy. Her impression was that McCarthy was expecting to receive names of preferred candidates.¹⁴⁶ McCarthy testified, however, that she never received favored names from Slaney, or any other individual at OCP, on any occasion.¹⁴⁷

200. Slaney's next interviews, also in February 2005, were for an assistant chief probation officer position in Fall River. Slaney's notes and testimony describe Tavares as providing Slaney with the names of five preferred candidates for the position. Slaney testified that she shared these names with the chief probation officer for that court, James Flannery, in advance of the interviews.¹⁴⁸

¹⁴⁶ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 39-41.

¹⁴⁷ Testimony of Rita McCarthy, September 27, 2010 (Exhibit 115), at 91.

¹⁴⁸ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 42-43.

201. Slaney confirmed that she understood she was to try to get the preferred candidates for the Fall River assistant chief probation officer position onto the list of finalists, no matter how they actually performed during their interviews. Notably, Slaney herself wanted to move yet another candidate to the next round no matter how she performed during the interviews, and obtained permission from Tavares to do so.¹⁴⁹

202. During this round of interviews, both Slaney and Flannery listed all the preferred candidates among their top eight. One of the preferred candidates, however, Lucy Ligotti, was ranked only eighth by Slaney and eighth by Flannery. Ligotti was ranked 14th (second to last) by the judge sitting on the panel, which resulted in her not being among the top eight candidates based on an average ranking. She was tenth overall, and eliminating one candidate who did not appear on two lists she was ninth. Accordingly, Ligotti was excluded from the list of finalists.¹⁵⁰

203. Ligotti's father-in-law is the clerk magistrate in Hingham. At the time she was interviewed, this was known to the interview panel, and Slaney assumed it was why Ligotti was a preferred candidate.¹⁵¹

204. Slaney testified she had a conversation with Tavares the following day concerning the Fall River hiring, in which Tavares stated "[t]here's a name missing from the list." Slaney understood this to be a reference to Ligotti, and explained that she was excluded because she was not among the top eight candidates appearing on both lists. Tavares responded that based on the instructions she had given Slaney, any candidate appearing among the top eight in two lists

¹⁴⁹ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 43-44.

¹⁵⁰ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 53-54.

¹⁵¹ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 85.

should become a finalist, and insisted that Slaney go back to the other two interview panel members to obtain their signatures on a new list that included Ligotti.¹⁵²

205. Tavares's "interpretation" of the interview instructions was deliberately false. The instructions provided to the local round interview panel did not state that all candidates ranked in the top eight by any two panelists must go to the second round:

At the conclusion of all interviews, each Interview Committee member shall rank all candidates, but submit only the top eight candidates per position. Candidates must appear on at least two interview committee members' lists in order to be eligible for recommendation to the Commissioner of Probation.¹⁵³

Thus, apart from special circumstances called for in the union contract, only eight candidates per position could advance to the final round, not nine or potentially even more. If there were any doubt, Section 4.302(E) of the *Policies and Procedures Manual* is unambiguous that only eight names may be forwarded to the Commissioner. *See supra* ¶¶ 83-85, 94-94.

206. In response to this call with Tavares, Slaney did create a new list that included Ligotti as a ninth finalist. The next day, and following a call from Tavares' secretary asking if the new list had been finalized, Slaney sought the signatures of the two other panelists, Chief Probation Officer Flannery and Judge Gilbert Nadeau.¹⁵⁴ She testified that when she approached Judge Nadeau for his signature, he was angry over Tavares's insistence on a departure from ordinary practice:

A. ... He said Liz Tavares had a nerve coming up to Williamstown, which is where the judges had their conference every year, and lecturing us on following procedures when she isn't willing to -- he never finished saying that. He said, "Never mind, I shouldn't say anything here."

¹⁵² Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 61-64, 68-69.

¹⁵³ Interview Process Memorandum (Exhibit 27).

¹⁵⁴ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 69, 74, 80-81.

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* * *

Then he said, “Ellen, I’m not mad at you; I know this isn’t your decision.” I indicated I knew he was going to make some calls. Wait a minute. I knew he knew I concurred with his number 1 choice, and she was mine, too. He said he was going to make some calls, and they hadn’t seen the last of him yet. Again he said maybe he shouldn’t say anything now. I agreed that it was probably better if neither one of us said anything further but urged him to wait in making his calls at least until a selection was made. I suggested that this might be a “courtesy interview” for Lucy Ligotti and indicated that they had not told me definitely that she would be the final choice.

* * *

Again, he said he wasn’t upset with me and probably shouldn’t be upset with Liz either because he knew she probably had her marching orders, too. I agreed this was a difficult system to work in when we’re depending upon the legislature’s goodwill for our budget. He said he didn’t really care who their appointments were, but if this hiring process was going to be a farce, they shouldn’t ask him to waste his time on it. He signed the list, and I left.

Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 61, 82-83, 85-86.

207. Independent Counsel interviewed Judge Nadeau about this incident. He stated to Independent Counsel “I knew full well that the process was political, and I probably should not have done it, but I signed off on her.” According to Judge Nadeau, he did so because he “perceived the Commissioner had a lot of drag, and Flannery was very nervous when he approached [Nadeau] about this.” The Judge was clearly disgusted at the fraudulent process O’Brien had created but believed little could be gained by refusing to sign on this one occasion.

208. Judge Nadeau also had sent a memorandum, at Judge Connolly’s suggestion, to Chief Justice Mulligan concerning the incident, in which, after recounting what had happened, he wrote:

I fully understand that the authority to appoint to this position rests with the Commissioner. Apart from any concerns I have about the relative qualifications of the candidates, the specified procedure

was abused in this instance. I frankly do not see the value of judicial participation in such a process.¹⁵⁵

209. According to Slaney's testimony and contemporaneous notes, when she provided the new nine-person list to Tavares, Tavares stated that "she hoped [Slaney] would support the Commissioner in his decision and that sometimes the political thing needed to be done." Slaney understood this to be a reference to keeping the legislature happy.¹⁵⁶ In a subsequent conversation Tavares also asked Slaney to "present a united front" with respect to anyone questioning the integrity of the process.¹⁵⁷

210. At the final round of interviews, Ligotti was in fact selected for the position. When the issue of Ligotti's appointment went up to Chief Justice Mulligan for approval, however, he rejected her appointment on the basis that the prescribed process had not been followed: Ligotti was not among the top eight candidates appearing on both lists, and so was ineligible for a final round interview.¹⁵⁸

211. Commissioner O'Brien thereafter filled the position with another of the preferred candidates whose name he had given to Slaney, Larry Lopes.¹⁵⁹

212. Following the Ligotti incident, Slaney sat on only three more interview panels (for each she was again given the names of preferred candidates¹⁶⁰) before being removed from interviewing and reassigned to audits, a subject discussed below in the section on retaliation. During one of these panels, Slaney received a call from Deputy Commissioner Tavares'

¹⁵⁵ A copy of the memorandum from Judge Nadeau to Chief Justice Connolly (forwarded to Chief Justice Mulligan) accompanies this Report as Exhibit 69.

¹⁵⁶ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 79, 86.

¹⁵⁷ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 91.

¹⁵⁸ A copy of the March 29, 2005 letter from Chief Justice Mulligan to Commissioner O'Brien rejecting Ligotti's appointment and explaining his reasoning, accompanies this Report as Exhibit 42.

¹⁵⁹ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 152-53.

secretary checking to make sure that the favored candidates was going to make the list of finalists:

Q. On the next page, still on March 8, you note that Yvonne Roland called during a break in the interviews and wanted to know on behalf of Deputy Commissioner Tavares how the interviews were going?

A. Yes.

Q. Did you have an understanding of what she meant by how they were going?

A. Since she had indicated that the Commissioner was interested in Joe Dooley and Mary Santos, I assumed that she was checking to see if that was going to happen.

Q. Was it typical that you would get a call either from Deputy Commissioner Tavares or Yvonne Roland on behalf of Deputy Commissioner Tavares to see how interviews were going while they were going?

A. I interpreted that as pressure to do what they told me to do. I don't think that's the norm.

Testimony of Ellen Slaney, August , 2010 (Exhibit 135), at 137.

213. Independent Counsel asked Slaney why she went along with the request to fix hiring in 2005 when she had resisted doing so in 1999 and 2000. Her response was essentially that she had convinced herself that as the Commissioner's representative on the panel, she had no choice, even if that overrode her own evaluation of the candidates:

Q. So it was your approach to hiring that no matter what you have may have known as the Regional Supervisor for many of these people or what you may have seen in the interview room, that if the Commissioner had an interest in someone making the list of finalists, you should put them on your list of top eight?

A. Yes.

¹⁶⁰ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 72, 132-33.

Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 78.

4. Testimony of Edward Dalton

214. Edward Dalton was a regional supervisor responsible for Barnstable County until his retirement earlier this year.

215. Dalton testified that he began receiving names from the Commissioner's office during the period between Commissioner O'Brien's appointment in 1998 and the hiring freeze in early 2001.¹⁶¹ His understanding was that the individuals whose names he was being given were to make the list of finalists, whether or not they were among the most qualified:

Q. Did you feel pressure yourself to include names of individuals from the commissioner's office whom you did not believe should have been on the list of finalists?

A. I did.

Q. And on some occasions did you feel forced to include those names?

A. I did.

Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 54-55.

216. For example, Dalton described one occasion in which he rated a candidate whose name he had been given by the Commissioner's office (the son of a presiding judge) in the top eight only because he had been told to do so:

Q. Do you believe that both you and Mr. Teixeira rated Kelleher eighth in deference to who he was as opposed to his qualifications?

A. Yes.

Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 63-65. That same candidate was ranked 24th out of 30 by the judge on the panel. *Id.* at 66.

¹⁶¹ Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 31-32.

217. On another occasion, Dalton was unable to get all of the candidates whose names he had been given onto the list of finalists. He testified that Deputy Commissioner Wall followed up with him to find out why he had been unsuccessful. Dalton responded to Wall that the candidates who were left off the finalist list were “horrible.”¹⁶² Wall then informed Dalton that the “Commissioner was not happy”:

Q. What did you understand that to mean?

A. I understood it to mean that unless all of the candidates whose names I was provided made the list all of the time, people would not be happy.

Q. And by people, to whom to you refer?

A. The commissioner.

Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 48-49.

218. According to Dalton, Wall ended the conversation by instructing Dalton that if he could not do what he was “was supposed to do,” then he should call OCP for assistance.¹⁶³

219. On another occasion, the same Douglas MacLean who came before Regional Supervisor Slaney also came before Dalton. Dalton actually ranked him 16th, high enough to make the list of finalists because there were two positions open. The other two panel members ranked MacLean below 16 so he did not make the list. Dalton admitted that his ranking MacLean 16th was not based on the merits.¹⁶⁴

220. Dalton testified that after MacLean failed to make the list of finalists, Commissioner O’Brien called Dalton and asked “Why didn’t McLean make the finalists?”

¹⁶² Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 42-48.

¹⁶³ Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 50-51.

¹⁶⁴ Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 84.

Dalton responded by noting MacLean's criminal record, at which point O'Brien ended the conversation.¹⁶⁵

221. Dalton provided Independent Counsel a series of tapes he made from answering machine recordings left in October 2000 by Janet Mucci, the Department's Human Resources Director. In these voicemails, the authenticity of which was confirmed under oath by Dalton and Mucci, Mucci can be heard passing along the names of candidates that the Commissioner wanted to see become finalists, discussing strategies Dalton might employ to get all of the favored candidates onto the list of finalists, and addressing retaliation against uncooperative interviewers:

Hi Ed, it's Janet. I know you are not doing interviews today but in Dedham there are people that have to be finalists, I was just thinking about that now. I think there's only three. Jack had given me, one, two, three, four, like 7 names to be interviewed, some were definitely just interviews. When he comes in Monday, I mean, I'm going to check with him again, I don't know about a couple of them. I don't have them down as a finalist, so I'm assuming they're not, but there are three. There's an APO David Maceachern, M-A-C-E-A-C-H-E-R-N, a Jean Roche, R-O-C-H-E, (*whispering*: I think she's a neighbor or something [inaudible], I don't know, I don't what she is), and the other one is Daniel Disangro, D-I-S-A-N-G-R-O – he looks good on paper, I don't know what he's really like, but, he's in for a few of them, I think, but those are the three that he wants on there. And I will, I, I know he's going to do a letter to Rita saying she can fill the second slot, I know that's not an issue so you definitely can pick 16 finalists. We didn't send out, I don't believe, the last day of the 16th to you, but I don't think there's very many on that day anyway but I think Jackie's holding that because I figure by the time he gets in Monday, there could be a couple of throw-in's. I think there's only about 4 people on that Monday. Oh no, Monday's the long day now, I'm sorry, it's the 18th, that's short. That's the day that I'm afraid he might throw more on, but I will definitely touch base with you at the beginning of the week but I wanted to tell you about these three anyway. Ok. Thanks. Bye.

* * *

¹⁶⁵ Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 128-29.

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Ed, it's Janet. I've got some names for finalists in the Dedham District Court. I know I had left a couple on your machine the other day but, I've got to give you these. There's a Douglas Maclean, M-A-C-L-E-A-N, Jennifer McHugh (she was the one that you had asked about for the interview but somebody obviously called), Daniel Disangro, D-I-S-A-N-G-R-O, Jean Roche, R-O-C-H-E, and David Maceachern, M-A-C-E-A-C-H-E-R-N. I mean, that's 5. She can have 16, thank God, but can you just make sure they're in there somewhere. I just wanted to let you know too Jack was sort of praising you in there today. Now, don't, don't fall off your shoes laughing at that, [*Whispering:*] but he was saying something about you doing a good job getting people on for finalists or something, um, I think that's what he was talking about. So, anyway, so now that I just beefed you up a little bit, you gotta do this. And he was saying if people were real uncomfortable with this, he's going to have to remove people from doing interviews. He wasn't talking about you in that statement, but he has no choice for these finalists so, you know, the worst is, oh in Dedham you're not going to have a problem because there's 16 but the worst is tie people if you have to and that's what I'm going to say you should... I think yours is Falmouth ... I'll talk about Falmouth. I won't give them to you right now because it's so far off, but there's one, two, three, four, five, there's 6 people to be finalists in Falmouth for this one job, so the only thing I can think of, as I said to him, the only thing that's going to bail these guys out on this is if they tie people. So, we'll talk about those 6 people but [*whispering*] if you can only come up with 8 numbers, maybe you got a whole bunch tied for eight, or 6 or 7, gonna have to do something like that to accommodate these things because he had a meeting at the State House yesterday and he has no choice. So, anyway, will you just leave me a message Ed and let me know that you got that message. Thanks. Bye.

* * *

Ed, it's Janet. I just got your message that you got my message so that was the Dedham thing ... [*whispering*] [inaudible] ... Falmouth and I'll talk to you later about those further dates [inaudible]... Don't need to worry about that now but that one might be a little bit more difficult. The only good thing is it's Jill Ziter [*regional coordinator for District Court Chief Justice*] ... [*whispering*] ... and I'm not sure if you interviewed with Jill or not, but Brian [*Murphy*] interviewed with her last year in New Bedford [inaudible] ... she was accommodating ... she'd kind of go along with anything anybody wants ... that's the one that has so many finalists and [*whispering*] there's only, you know, you're

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only supposed to come up with eight that you may have to be creative and tie people. Like I said, I think I left on your message and I was talking to Ellen yesterday, you can ... we found last year, and I have a feeling this is for some of the people that may have gotten these people on ... we tied them ... you know so you have 2 tied for eighth ...*[whispering]* 2 tied for sixth; anything like that just to get them in there. Then you end up with more than 8 finalists but Tony has never questioned when he's seen ties. *[whispering]* I know Paul Lucci tied and I think Bill Burke did last year and you may have too but it just seems like a way to kind of accommodate this and get the people the core ones, because it is tough, at least in the Dedham situation you've got 16 finalists, so it makes it a little bit easier but Falmouth's going to be tough because there is about, I think there's 5 or 6 finalists and that out of eight is crazy. But Jack had had a meeting over at the State House yesterday, and I think, or the day before, and again that triggered a lot of this. You know *[whispering]* when he got everything he wanted this year in the budget moneywise, so they feel like they did that for him, you know, and obviously he needs to do this for them. So that's why he was saying to me *[whispering]* he's more than willing to take people off of interviews ... *[inaudible]* ... making it real uncomfortable. So, I have a feeling Ellen might bail on hers and that's ok, he's really ok with that. But he was very complimentary about you yesterday, I think I told you that a little bit on machine, I'll talk to you more about it, but it was just with the interviews and stuff. I mean, he says you accommodated him all the time *[inaudible]* *[whispering]* ... I forget. You know you tried your damndest if you didn't, but he also made a comment to me that, I believe he was referring to the interviews for the Deputy and telling people that they didn't get jobs and stuff, I think, he sort of said it like I, like I was supposed to know about what he was talking about, but he said *[whispering]* even recently with what went on, he said Ed was a real trooper and he was a team player in all this. That was a, for him, like a big compliment. *[Laughter.]* So, just so you know. So that was *[whispering]* interesting you didn't get the job but at least if you think it through ... *[inaudible]* ... But I would say when you're going through these if you have any problem getting any of them on, *[whispering]* I'd, I'd pick up the phone to call, call I don't know what to tell you ... *[inaudible]* Burke, to call Paul, I don't know. But he's real insistent that these people be there, see I know that makes it really tough. If Rita would at least go along with putting on 2 out 3, I guess you can get them on somehow by that, but if you think anybody's not going to make it, I'd *[whispering]* pick up the phone and call. I don't know, I don't know what else to tell you to do. I have a dentist appointment, so I'm leaving at 1:30, I don't know

[*whispering*] when he'll be in. Otherwise, you can call me and I'll go get him if you want. [*whispering*] I wouldn't hesitate to pick the phone up and call him and tell him that you [*inaudible*] [*laughter/giggle*] or something. At least it will cover you on your end, you know. Hey, have a good day, bye.¹⁶⁶

222. From early 2001 until the end of 2004 a hiring freeze was in place. In February 2005, following the lifting of that freeze, Dalton sat on a local panel interviewing for an assistant chief probation officer position in Barnstable District Court. Prior to the start of that interview Dalton received a number of names from Tavares of preferred candidates from the Commissioner's Office, including a probation officer in charge named Elzy Tubbs.¹⁶⁷

223. Dalton testified that Tavares also gave him the names of two candidates who were *not* to make the list of finalists – Joseph Zavatsky and Barry Nunes. Dalton's understanding was that they were blacklisted for previously filing grievances concerning another round of hiring in which they were unsuccessful.¹⁶⁸

224. Tubbs missed his interview time, apparently due to a miscommunication. Dalton testified that he attempted using every means to contact Tubbs, all to no avail. The panel scored the remaining candidates, and created a list of finalists without Tubbs. Both Zavatsky and Nunes were on the list of finalists, although Dalton ranked them both below 8th.¹⁶⁹

225. Later in the day, Tubbs arrived, but the judge sitting on the panel refused to reopen the interviews, noting the unfairness to those who were on time and claiming further interviews would be in breach of laws governing the holding of meetings.¹⁷⁰

¹⁶⁶ Voicemail recordings (Exhibit 31).

¹⁶⁷ Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 90, 95.

¹⁶⁸ Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 101-102.

¹⁶⁹ Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 103 & exhibit 10. A copy of exhibit 10 to the testimony is found with the excerpts of the testimony as Exhibit 103 to this Report.

¹⁷⁰ Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 91-94.

226. Ultimately, following consultations among judicial and Probation Department personnel, an entirely new local round of interviews was held so that Tubbs could participate. The general sense among both groups was that Tubbs may have been the victim of a legitimate miscommunication. Dalton was not permitted to participate.¹⁷¹ This new panel ranked Tubbs on the list of finalists, and did not include Zavatsky and Nunes.¹⁷² Tubbs was ultimately selected for the position.

227. Following his “failure” to get Tubbs on the list of finalists the first time and/or to have Zavatsky and Nunes blacklisted, Dalton was removed from interviewing altogether, as discussed further below in the section dealing with retaliation.

5. Testimony of Francis Campbell

228. Frank Campbell served on the screening panels beginning in 2005, but did not generally participate in the local rounds of interviews. He did, however, participate in such interviews in 2001 and also in 2008. In total, he conducted interviews for one court in 2001 and five courts in 2008.¹⁷³

229. Campbell testified that he was provided with names of two preferred candidates for probation officer positions in 2001, and both were ultimately hired. He could not, however, recall who provided him with the names.¹⁷⁴

230. With respect to each round of interviews in 2008, Campbell recalled either being contacted by Deputy Commissioner Francis Wall, or himself contacting Wall, so that Wall could provide him with a list of “recommended” candidates.¹⁷⁵

¹⁷¹ Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 104.

¹⁷² Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 105 & exhibit 9. A copy of exhibit 9 to the testimony is found with the excerpts of the testimony as Exhibit 103 to this Report.

¹⁷³ Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 98, 123.

¹⁷⁴ Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 100-101.

231. In some instances, Campbell recalled the names of preferred candidates that he received from Wall. For example, he recalled receiving the name of Patrick Lawton for a round of hiring at the Plymouth County Probate and Family Court. Lawton is the son of Judge Mark Lawton.¹⁷⁶

232. On most occasions, Campbell shared the names he had received from Wall with the chief probation officer sitting with him on the interview panel. He did so with the purpose that it might cause the chief probation officer to rank the preferred candidates higher than the chief probation officer otherwise would have:

Q. Was it your goal in sharing the names with the CPO in Plymouth District Court to have the CPO rank the recommended candidates higher than he ordinarily might have if he did not know that these were the recommended candidates?

A. I think one could certainly draw that conclusion.

* * *

Q. [T]he point you're trying to make to the CPOs – right? – is that the front office, the OCP, wants to see these people in the next round and so, if you can, rank them higher than you otherwise might have so that we can get them into the next round?

A. I will concur to the way you frame the question.

Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 131, 133-34.

233. Campbell testified that there only was one occasion on which he did not pass the names along to the chief probation officer. Tellingly, his explanation for not doing so was that, based on his review of the favored candidate's qualifications, he knew they would "shine" during

¹⁷⁵ Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 94-95, 123-24.

¹⁷⁶ Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 116.

the interview on their own merits. Therefore it was unnecessary to notify the chief probation officer that the candidate was favored by the Commissioner.¹⁷⁷

234. Campbell testified that he never shared the names of the recommended candidates with the judges on the interview panels.¹⁷⁸

235. Campbell could not recall any occasion in which a preferred candidate failed to make the list of candidates for a final round interview, and his best memory was that all of them did.¹⁷⁹

236. Campbell further testified that, based on his receipt of names of preferred candidates from Wall, and although he tried always to be accurate and fair, he was “sure” that he had ranked some preferred candidates more highly than he otherwise would have, based on his knowledge that they were preferred:

Q. Did you ever rank a candidate more highly than you otherwise would have because you received that candidate’s name from Fran Wall?

A. Possibly. I’m sure I did at some point. Again, knowing that the candidate is a recommended candidate, it’s difficult without question to even unconsciously be as objective with the candidate’s interview for certain if you know there’s an interest in that candidate. So quite possibly I did, unwittingly, rank a candidate higher.

Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 138.

237. For example, although he had other reasons for ranking him high, Campbell testified that it was “very possible” he ranked Patrick Lawton higher than other interviewers did

¹⁷⁷ Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 181-82.

¹⁷⁸ Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 136-37.

¹⁷⁹ Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 120.

(Campbell ranked him 3rd, the other panel members ranked him 10th and 11th) because he was aware that Lawton was a preferred candidate.¹⁸⁰

6. Testimony of Richard O'Neil

238. Regional Supervisor Richard O'Neil, who is responsible for the Probate and Family Courts, also testified that he received the names of preferred candidates from the Commissioner's Office with instructions to get them onto the list of finalists.¹⁸¹

239. According to O'Neil, the Probate Court was not popular for people seeking jobs in the Probation Department, and at first, the pace of his receiving names, typically from Deputy Commissioner Tavares, was slow. However, over time the provision of names of preferred candidates became common.¹⁸²

240. O'Neil explained that when he received names from OCP, he shared them with the chief probation officer sitting on the local interview panel, and the two of them arranged to have the preferred candidate make the list of finalists:

So I would have a dialogue with the Chief Probation Officer, either in person on the day of the interview or in advance, and give them an indication of who the Commissioner had an interest in making the next round. A lot of my Chiefs were newer appointments, so they generally went along. They understood what was expected of them, meaning this person should make it to the next round. And kind of the methodology for getting somebody to the finals was three panelists. If there was going to be a list of eight names, let's say, to make it to the finals, two of the three panelists had to have that person's name in the top eight.

Testimony of Richard O'Neil, August 3, 2010 (Exhibit 124), at 30.

241. O'Neil admitted that this resulted in some candidates making it to the final round of interviews who did not deserve to on the merits:

¹⁸⁰ Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 152-53.

¹⁸¹ Testimony of Richard O'Neil, August 3, 2010 (Exhibit 124), at 24-25.

So, you know, it didn't take too long before some of the folks that made it to the top eight shouldn't have been in the top eight. I mean, some were very qualified, and some were not.

Testimony of Richard O'Neil, August 3, 2010 (Exhibit 124), at 30.

242. According to O'Neil, the discrepancy in scoring for favored candidates between himself and the chief probation officer on the one hand, and the judge on the other, was on occasion so great that judges could not help but infer that some manipulation of the process was occurring. Consequently he thereafter was open with the judges on his panels about the Commissioner's attempt to game the system:

So, for instance, if I was given a name and I talked to the Chief about it and, initially, that's the only person that I had a dialogue with -- and when I say initially, I mean the first few rounds of interviews, regardless of what division I was in -- so the judge had somebody 50th, and I had them fifth. All of a sudden there was questions being asked by the judges: Are you seeing something, Rick, in this person that I'm not seeing? And I started to be concerned about my own integrity and reputation with the judges, and I knew the judges were talking to one another, and some of the judges would even say to me as time went on: Okay, Rick, who's on the list today? And I would, as time went on, I would say openly before we started the entire process: The Commissioner has an interest in these names -- name or names. You can choose to do with that whatever you want.

Testimony of Richard O'Neil, August 3, 2010 (Exhibit 124), at 32.

243. O'Neil recounted that some of the judges called the Commissioner to express concern about preferred candidates who had made the list of finalists.¹⁸³ For example, Douglas MacLean also came before an interview panel on which O'Neil was sitting and shared his

¹⁸² Testimony of Richard O'Neil, August 3, 2010 (Exhibit 124), at 29-30.

¹⁸³ Testimony of Richard O'Neil, August 3, 2010 (Exhibit 124), at 33-34.

criminal background with the panel. This prompted the judge on the panel, Elizabeth LaStaiti, to call Commissioner O'Brien.¹⁸⁴

244. While some of the candidates whose names he was given no doubt deserved to make the final round of interviews on their own merits, as quoted above “some of the folks that made it to the top eight shouldn’t have been in the top eight.” Indeed, O’Neil stated that “99 if not a hundred percent of the time, the names that [he] was given made the list.”¹⁸⁵

245. Furthermore, O’Neil testified that, at least in his experience, if there were one or more favored candidates in an interview pool, a favored candidate got the job:

Q. Yes, are you aware of any instance where if at least one favorite candidate was on the list, a non-favorite candidate got the job?

A. I don’t believe so. I believe – from my recollection, if there was a favorite candidate on the list, they got the job.

Testimony of Richard O’Neil, August 3, 2010, at 129-30.

7. *Testimony of Mark McHale*

246. Like others, Regional Supervisor Mark McHale testified that he received the names of favored candidates from the Commissioner’s Office.

247. In particular, he testified that he received names of favored candidates from First Deputy Commissioner Tavares, Deputy Commissioners Francis Wall and Patricia Walsh, and Edward Ryan.¹⁸⁶

¹⁸⁴ Testimony of Richard O’Neil, August 3, 2010 (Exhibit 124), at 130-34, 139-40, 157-59.

¹⁸⁵ Testimony of Richard O’Neil, August 3, 2010 (Exhibit 124), at 33-34, 36.

¹⁸⁶ Testimony of Mark McHale, July 30, 2010 (Exhibit 117), at 50. Relevant excerpts of the testimony of Regional Supervisor McHale accompany this Report as Exhibit 117.

248. McHale testified that the message which accompanied these names was to give the specified candidates “some consideration,” which he understood to mean that he should get these candidates through the local panel and onto the next round of interviews:

Q. During your involvement in hiring over your tenure as a Regional Supervisor, were there instances when you were given names of preferred candidates during the hiring process?

A. The way it was, I was given names, and they said “In consideration of how these people do during the interview process, could you give them some consideration.”

Q. Was “consideration” the word used?

A. Yes.

Q. And what did you take that to mean?

A. If they did well in the interview, is there any way, you know, that you’d feel a consideration to move them on, if they did well in the interviews. And I said, we’ll see how they do in the interviews.

Q. Well, everyone who was being interviewed was given consideration, right?

A. Oh, absolutely. But you asked me, were you given names.

Q. Well, the names that you were given wasn’t just that they were supposed to be given the normal consideration in the interview process, correct?

A. I never knew how to take that, just, “Could you use consideration on these names that were given to you.”

Q. Was it your understanding that those candidates whose names you were given were supposed to make it through to the next round?

A. I’d have to say yes.

Testimony of Mark McHale, July 30, 2010 (Exhibit 117), at 48-49.

249. McHale testified that he understood he was to put the preferred candidates on the list for final round interviews, even if they were not among the most qualified candidates interviewed:

Q. ... Your understanding of what they were trying to communicate, even if they didn't say it explicitly, was try to get these people through even if ordinarily they won't make the cut for the top eight to go to the next round?

A. Yes.

Testimony of Mark McHale, July 30, 2010 (Exhibit 117), at 82.

250. McHale testified that he was never provided the basis on which the Commissioner's office was asking him to pass these preferred candidates through to the next round of interviews.¹⁸⁷

8. Testimony of Jeffrey Akers

251. Regional Supervisor Jeffrey Akers testified that he received names of preferred candidates for probation officer and assistant chief probation officer positions from the Commissioner's office prior to or during interviews.

252. Typically, Deputy Commissioner Tavares or Edward Ryan provided Akers with the names of preferred candidates, explaining that these were candidates that "they were interested in having on the list."¹⁸⁸ Akers explained that he understood that these were candidates that the Commissioner's Office wanted to see on the final list of candidates that was passed on to the next round of interviewing.

Q. And it was your understanding when you were being given these names that these candidates needed to make it through to the next round of interviewing?

¹⁸⁷ Testimony of Mark McHale, July 30, 2010 (Exhibit 117), at 54.

¹⁸⁸ Testimony of Jeffrey Akers, August 25, 2010 (Exhibit 92), at 54. Relevant excerpts of the testimony of Regional Supervisor Akers accompany this Report as Exhibit 92.

A. Correct.

Testimony of Jeffrey Akers, August 25, 2010 (Exhibit 92), at 59.

253. On at least one occasion, Akers passed on the names of the candidates he received to the Chief Probation Officers with whom he was conducting the interviews.

Q. ...What did you tell [the chief probation officer]?

A. I said "These are individuals that need consideration."

Q. Is that the word you used, consideration?

A. Best of my knowledge, yes.

Q. And by consideration, you meant that they needed to get through to the next round?

A. Correct.

Testimony of Jeffrey Akers, August 25, 2010 (Exhibit 92), at 58-59

254. During his testimony, Akers was unable to recall any occasion in which the recommended candidates did not make it to the final round of interviews:

Q. Are there any instances you can recall where you were given names of individuals to make it through to the next round of interviewing and that didn't happen in the PO position context?

A. Not that I can recall, no.

Q. So each time you were given names of individuals to make it through to the next round of interviewing, all those candidates made it through?

A. To the best of my knowledge.

Testimony of Jeffrey Akers, August 25, 2010 (Exhibit 92), at 59.

255. Akers also testified, however, that he believes that all of the candidates whose names he was given in advance would have made it to the next round of interviewing regardless of whether they had been recommended by the Commissioner's Office.¹⁸⁹

256. Akers told us that he had no problem with an interviewing process where the candidates were essentially pre-determined before the interviews even began. According to Akers, if the Commissioner or Tavares thought these individuals were qualified and wanted them on the final list, "it wasn't up to [him] to tell them no."¹⁹⁰

9. Testimony of Brian Murphy

257. Regional Supervisor Brian Murphy testified that he received names of preferred candidates from the Commissioner's Office with respect to probation officer hiring, although, unlike other witnesses, he testified that he did not receive names with respect to assistant chief probation officers positions.¹⁹¹

258. Murphy explained that in the early years of Commissioner O'Brien's tenure, these calls came from one of the legislative liaisons, Michelle Cahill Martino:

Q. Describe for me what one of these calls from Ms. Cahill would consist of.

A. "You're doing interviews in a particular court. You need to – Can you please give these three people, give them a good look, given them consideration," you know, put it that way, "and see if they can be moved on." If they're really good, see if they can be moved on to the final, something to that effect.

Testimony of Brian Murphy, August 13, 2010 (Exhibit 123), at 73.

¹⁸⁹ Testimony of Jeffrey Akers, August 25, 2010 (Exhibit 92), at 40-41, 59-60.

¹⁹⁰ Testimony of Jeffrey Akers, August 25, 2010 (Exhibit 92), at 44, 62-63.

¹⁹¹ Testimony of Brian Murphy, August 13, 2010 (Exhibit 123), at 71-72.

259. When pressed that he should be giving everyone a good look, Murphy agreed that his understanding of what he was being asked to do was far more definitive:

Q. And again, I'm sure you gave everyone a close look that you interviewed. Correct?

A. Yes, absolutely.

Q. So you were being asked to essentially move these people along to the next stage?

A. Yes. I would say yes.

Testimony of Brian Murphy, August 13, 2010 (Exhibit 123), at 74.

260. In later years, Murphy stated that the names came from Deputy Commissioner Tavares and from Edward Ryan.¹⁹² According to Murphy, he received the names of favored applicants for approximately 75% of the interview panels on which he sat.¹⁹³

261. If Murphy did not believe that a preferred candidate was qualified to serve as a probation officer, he called Tavares or Ryan during the interviews to tell them so. Unlike many other interviewers who stated that the reaction to such calls was frequently anger, Murphy stated that Tavares always accepted his representation and did not push back, although Ryan did.¹⁹⁴ Murphy deliberately set a very low bar in judging which preferred candidates could move on to the next round of interviews:

Q. What were the sorts of issues that would cause you pause in moving along someone who was told to you to give special consideration to?

A. If a particular person did not present well. When I say present well, really did not articulate their issues at all, didn't answer the questions appropriately, maybe didn't have an idea as to what being a probation officer was really

¹⁹² Testimony of Brian Murphy, August 13, 2010 (Exhibit 123), at 80.

¹⁹³ Testimony of Brian Murphy, August 13, 2010 (Exhibit 123), at 81, 83.

¹⁹⁴ Testimony of Brian Murphy, August 13, 2010 (Exhibit 123), at 83-85, 87-88.

all about. Just, I mean, it would kind of jump out at me.
Of if I had an issue with a particular person.

* * *

Q. And what if you didn't have an issue with the name? Let's just say it was a candidate you weren't high on but they didn't have any glaring issues. Were you expected to move those people along?

A. I was expected to do whatever I could. ...

Testimony of Brian Murphy, August 13, 2010 (Exhibit 123), at 84, 89.

262. Murphy estimated that 75% of the time the preferred candidates whose names he had been given moved on to the final round of interviews.¹⁹⁵

263. One of the favored candidates that Murphy did rank high enough to make the list of finalists was Douglas MacLean, the candidate with a felony criminal record, and who appeared before Regional Supervisors Slaney, Dalton and O'Neil at different points.

264. Murphy testified that he knew of MacLean's criminal history and was given MacLean's name as a preferred candidate during interviews in Fall River District Court in approximately 2001.¹⁹⁶ He said MacLean openly discussed the fact that he had a criminal record but stated that it was "behind" him.¹⁹⁷ Murphy said that prior to interviewing MacLean, he had spoken with Rick O'Neil who was bothered by MacLean's name appearing on the list of favored candidates, but Murphy testified he thought MacLean performed well during the interview.¹⁹⁸ Murphy put MacLean through to the next round of interviewing after speaking with a judge whom MacLean listed as a reference.¹⁹⁹ MacLean was not selected for that position.

¹⁹⁵ Testimony of Brian Murphy, August 13, 2010 (Exhibit 123), at 91.

¹⁹⁶ Testimony of Brian Murphy, August 13, 2010 (Exhibit 123) at 100-102.

¹⁹⁷ Testimony of Brian Murphy, August 13, 2010 (Exhibit 123), at 103.

¹⁹⁸ Testimony of Brian Murphy, August 13, 2010 (Exhibit 123), at 101-103.

¹⁹⁹ Testimony of Brian Murphy, August 13, 2010 (Exhibit 123), at 102-103.

10. Testimony of Dianne Fasano

265. Regional Supervisor Dianne Fasano, like the other regional supervisors, testified that she received calls from Tavares or Ryan providing her the names of “people [who] had to make the final list.”²⁰⁰ According to Fasano, this happened on approximately three out of the 20 occasions on which she sat on an interview panel.²⁰¹

266. Fasano testified that with respect to some of the candidates whose names she was given, they were well qualified and would have made the final round of interviews even without the intervention of OCP. However, she testified that it was “true” that on at least one occasion, she was given the name of a candidate “who if taken solely on merit may not have advanced to the next round.” Nonetheless, Fasano passed that candidate along because she had been given her name by OCP.²⁰²

11. Testimony of Edward Rideout

267. Regional Supervisor Edward Rideout is presently responsible for the Department’s Training group. He recalled one occasion on which he participated in the local round of interviews for a probation officer position, and testified that he received names of favored candidates from OCP.

268. Rideout recounted that Tavares provided him the names of candidates that “should be entered into the next round of interviews.”²⁰³ Rideout shared them with the chief probation officer sitting on the interview panel.²⁰⁴ Of the three candidates whose names he was

²⁰⁰ Testimony of Dianne Fasano, September 3, 2010 (Exhibit 109), at 37-38.

²⁰¹ Testimony of Dianne Fasano, September 3, 2010 (Exhibit 109), at 39-40.

²⁰² Testimony of Dianne Fasano, September 3, 2010 (Exhibit 109), at 49-53.

²⁰³ Testimony of Edward Rideout, August 27, 2010 (Exhibit 129), at 47-50.

²⁰⁴ Testimony of Edward Rideout, August 27, 2010 (Exhibit 129), at 51-52.

given, Rideout believed he and the chief probation officer were able to get two to the next round, but the third was ranked so low by the judge that he or she did not make the list of finalists.²⁰⁵

12. Testimony of Francine Ryan

269. Regional Supervisor Francine Ryan also testified that she received names of preferred candidates for probation officer, assistant chief and chief probation officer positions.²⁰⁶ Ryan testified that Tavares gave her the names of favored candidates in advance of the interviews.²⁰⁷

Q. When that occurred, who provided you with those names for those candidates?

A. Liz Tavares.

* * *

Q. What would she say to you?

A. Just -- I don't know -- "Have these people get a final interview." I don't know what the exact wording was.

Q. Was it your understanding, though, that the names you were given were to make it on to the final round of interviewing?

A. Yes.

Q. And that was regardless of how they actually performed during the interview?

A. Yes.

* * *

Q. Was it your understanding, though, that when Ms. Tavares told you these individuals were to make it to the next

²⁰⁵ Testimony of Edward Rideout, August 27, 2010 (Exhibit 129), at 53.

²⁰⁶ Testimony of Francine Ryan, August 9, 2010 (Exhibit 132), at 66, 91-92.

²⁰⁷ Testimony of Francine Ryan, August 9, 2010 (Exhibit 132), at 68-69. Ryan testified that Edward Ryan may have also contacted her with names of favored candidates, but had done so after the interviews had already occurred. *Id.* at 100-101.

round, even if they weren't necessarily deserving, they were to make it to the next round anyhow?

A. The names were to be on the list.

Testimony of Francine Ryan, August 9, 2010 (Exhibit 132), at 68-69, 78; *see also* 128-29.

270. The process was so institutionalized that Ryan sometimes initiated the contact with Tavares in advance of interviews to see if there were names that had to make it on to the list of finalists.

Q. Did you ever have any discussions with Bill Burke about any candidates' names you were given from the Office of the Commissioner of Probation who were to make it through to the next round of interviewing?

A. Did I ever have a discussion with him?

Q. Did you ever talk to him about the fact that you were getting names from the Office of the Commissioner of Probation of candidates to put through to the next round?

A. Yes.

Q. What did that discussion consist of?

A. He said "Make sure you call Liz. Did you call Liz?" And I said yes.

Q. What was he saying? What did he mean when he said to you, "Did you call Liz?"

A. Before my interview, did you call Liz to see if there were names to be passed on.

Q. Were there instances where you were contacting Ms. Tavares to get names for the interviews that you were going to be conducting?

A. Yes.

Q. What did you say to Liz Tavares when you contacted her?

A. "Hi, Liz, I'm doing the interviews tomorrow for such-and-such a court."

- Q. Did you say anything else to her?
- A. “Do you have names that need to make the list?”
- Q. And what would she say to you?
- A. She would say either yes or no.
- Q. And she would provide you with the names if she had them?
- A. Yes.

Testimony of Francine Ryan, August 9, 2010 (Exhibit 132), at 97-98.

271. During the interview process, Ryan passed the names of the recommended candidates to the chief probation officers with whom she conducted the interviews.²⁰⁸ Ryan testified that in all instances the favored candidates were scored to the next round of interviews. Ryan, however, hedged her admission by claiming that each candidate whose name she was given in advance of interviewing “deserved to be passed on” to the final interview round.²⁰⁹

13. Testimony of Nicholas DeAngelis

272. Retired Regional Supervisor Nicholas DeAngelis testified that he received names of favored candidates from individuals within the Commissioner’s Office in advance of every probation officer and assistant chief probation officer interview panel he sat on while he was a regional supervisor.²¹⁰ DeAngelis told us that Deputy Commissioners Francis Wall and Elizabeth Tavares (and perhaps Deputy Commissioner William Burke), and legislative liaison Edward Ryan contacted him with names of candidates who “had to make the list” of finalists for the positions:

²⁰⁸ Testimony of Francine Ryan, August 9, 2010 (Exhibit 132), at 72-73, 93-94.

²⁰⁹ Testimony of Francine Ryan, August 9, 2010 (Exhibit 132), at 71-72, 79-80, 92-93.

²¹⁰ Testimony of Nicholas DeAngelis, August 24, 2010 (Exhibit 104), at 43-44.

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- Q. Now, I believe you said Fran Wall, Ed Ryan, and in some instances Liz Tavares would contact you?
- A. Correct.
- Q. When Mr. Wall contacted you on those occasions, do you recall with any specificity what he would say to you about the candidate?
- A. Nothing other than “Nick, these people have to make the list.”
- Q. And when you say they have to make the list, what list are you referring to?
- A. The list we would be sending back to Boston. We would basically cut down the number of applicants to eight for each position.
- Q. So these individuals had to make the list of people who were sent back to Boston?
- A. People who were sent back to Boston for a second interview.
- Q. And when Mr. Ryan contacted you, what would he say to you?
- A. Same thing.
- Q. Any difference in what Liz Tavares would say?
- A. No. Actually, I don’t remember her calling that much, but I think on one occasion she did call, or maybe two occasions she did call.

* * *

- Q. And in the first conversation where you were told that people had to make it onto the list for the next round, what happened during that conversation? Who did you speak to originally about it?
- A. Maybe Bill Burke. I really don’t know if I did talk to anybody about it other than that person. He says “They have to make the list. People called on their behalf.”

Testimony of Nicholas DeAngelis, August 24, 2010 (Exhibit 104), at 42-43, 44-45.

273. DeAngelis testified that he regularly passed the names of the favored candidates on to the chief probation officer sitting on the interview panel and, if he knew the judge on the panel, he also passed the names along to the judge as well.²¹¹

274. When he was first approached with names of candidates who had to make the final list, DeAngelis told us he was not happy about it:

Q. What was your response?

A. I didn't kind of like it. I felt that if I was doing the first round of interviews, it should basically be left up to me and my panel to determine who should make the list.

* * *

Q. So it was your concern at the outset that this idea of getting names in advance might undermine the process?

A. Yes.

Testimony of Nicholas DeAngelis, August 24, 2010 (Exhibit 104), at 45, 47.

275. DeAngelis told us that, despite his misgivings, in nearly all instances he scored the preferred candidates high enough so that they made it through to the final interview round. DeAngelis explained that the only time he did not put the preferred candidate through was when the candidate was "really lousy."

Q. Now, I think you said with respect to candidates that you didn't put through that you were asked to put through, they were just lousy I think was your word?

A. Real lousy. Incompetent? I don't know if I'd go quite that far, but they weren't very good, let's put it that way.

²¹¹ Testimony of Nicholas DeAngelis, August 24, 2010 (Exhibit 104), at 55.

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Q. Were there candidates, though, that you put through to the next round of interviewing that you didn't think were the most qualified candidates?

A. Yes.

Q. What was your cutoff between willing to put someone through to the next round and refusing to put them through to the next round when they were recommended by the commissioner's office?

A. Would they be able to do the job with proper supervision? If I thought they would, I didn't mind it too much.

Q. Were there instances where you put through candidates who met your criteria that they would be able to do the job with supervision, but there were other candidates who you believed were more qualified than those people?

A. Pretty close. I wouldn't say that I would prefer Jane Doe over Mike Smith because he was on the list. If Mike Smith was far better, I put him on; but if they were similar, I put Jane Doe on.

Q. So in instances where you felt that the candidates recommended by OCP were equivalent to another candidate, they would get the extra bump for getting the recommendation from OCP?

A. Correct, correct.

Testimony of Nicholas DeAngelis, August 24, 2010 (Exhibit 104), at 59-61.

276. DeAngelis testified that he did not receive names of preferred candidates in advance of the chief probation officer interviews he conducted. DeAngelis thought that he likely did not receive names in those instances because the number of candidates interviewed did not exceed the number of candidates that could be passed on to the final interview round and, accordingly, there was no need to ensure that certain candidates "made the list."²¹²

²¹² Testimony of Nicholas DeAngelis, August 24, 2010 (Exhibit 104), at 54.

14. Testimony of William Burke

277. Although a deputy commissioner and not a regional supervisor, Bill Burke also occasionally sat on local interview panels for probation officers and assistant chief probation officers, as well as chief probation officers.

278. As with the regional supervisors, Burke testified that he received the names of favored candidates from the Commissioner's office in advance of local round interviews:

Q. When you participated in panels with respect to hiring as Chief Probation Officer, were you given names by the Commissioner's office?

A. Yeah.

* * *

Q. And in your interviews for Assistant Chief and for Probation Officer, were you given names?

A. Yes.

Q. And did you also assume that – were those names coming from the Commissioner's office?

A. Yes.

Testimony of William Burke, July 22, 2010 (Exhibit 96), at 45-46.

279. Burke told us that these names were provided to him by First Deputy Commissioner Tavares and Deputy Commissioner Wall.²¹³

280. According to Burke, the vast majority of the individuals' whose names he was given for assistant chief and chief positions made the list for a final interview:

Q. Does it follow that all of the individual's names which came from the Commissioner's office would be sent back to the Commissioner's office at least for the positions of Assistant Chief and Chief Probation Officer?

²¹³ Testimony of William Burke, July 22, 2010 (Exhibit 96), at 26.

A. I'd say yeah, yes.

Q. So if the Commissioner's office through Liz Tavares or some other individual, Fran Wall, gave names to you or to the Regional Administrator for a promotion to Assistant Chief Probation Officer, those names would be among the names that went back to the Commissioner's office?

A. Mm hmm, yes.

Q. And that was likewise true for the position of Chief Probation Officer?

A. Correct.

Q. If names came from the Commissioner's office, at least those names went back to the Commissioner's office, is that correct?

A. I'd say 99 percent of them.

Testimony of William Burke, July 22, 2010 (Exhibit 96), at 53.

281. Burke could think of only one chief probation officer, and no assistant chief probation officers, appointed in western Massachusetts who were not previously identified to him as preferred candidates by the Commissioner's office.²¹⁴

15. Testimony of Stephen Bocko

282. Deputy Commissioner Stephen Bocko also sat from time to time on local panels interviewing for probationer officer positions.

283. Bocko testified that in the late 1990s, shortly after O'Brien became Commissioner, he sat on a local panel interviewing for two probation office positions in the Framingham District Court. According to Bocko, he was contacted by Janet Mucci, and "was asked to include one person on the final list of candidates." She told him that "the commissioner

²¹⁴ Testimony of William Burke, July 22, 2010 (Exhibit 96), at 58-61.

wanted a certain person to be on the final list of possible candidates.” His response was “oh, okay,” and he “tacked” that person on to the bottom of the list.²¹⁵

284. Asked whether the favored candidate for the Framingham position would have made the list of finalists if not for the intervention of the Commissioner’s Office, Bocko testified “absolutely not.” According to Bocko, he nonetheless went along with the request to add this person to the list of finalists “[o]ut of loyalty to the commissioner.”²¹⁶

285. Bocko testified that on another occasion in 2000 he was provided, by Deputy Commissioner William Burke, the name of a candidate that the Commissioner wanted to see make the list of finalists. Burke told him that “we needed to have [the candidate], this associate probation officer, be among the candidates presented to the commissioner.”²¹⁷

F. Associate Probation Officer Hiring

286. Deputy Commissioner Burke, who testified that he was involved in most associate probation officer hiring during Commissioner O’Brien’s tenure, was forthcoming in stating that he did receive names from OCP of preferred applicants for associate probation officer positions, with the expectation that he would pass them through to the Commissioner for potential selection:

Q. In the process of hiring Associate Probation Officers, were you ever given names by the Commissioner or the Commissioner’s staff or anyone else of individuals whom they understood you were going to interview?

A. Yeah.

Q. And what was the purpose of you being given names?

A. To make sure they make the cut.

²¹⁵ Testimony of Stephen Bocko, September 13, 2010 (Exhibit 94), at 57-61.

²¹⁶ Testimony of Stephen Bocko, September 13, 2010 (Exhibit 94), at 62-63.

²¹⁷ Testimony of Stephen Bocko, September 13, 2010 (Exhibit 94), at 65-69.

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Q. When you say to make sure they make the cut, do you mean by that --

A. To get passed on.

* * *

Q. If I've understood you correctly, with respect to Associate Probation Officer candidates, you were given names, and your understanding was that you were to approve those names and send them back to the Commissioner's office, is that correct?

A. Correct.

Testimony of William Burke, July 22, 2010 (Exhibit 96), at 22-23.

287. According to Burke, he received the names of favored candidates from Tavares, Wall, and Ryan.²¹⁸ He stated that he did not receive names directly from Commissioner O'Brien, but his understanding was that the names were originating from the Commissioner.²¹⁹

288. As discussed above with respect to probation officer hiring, Burke stated that the favored candidates did not always make it through the screening round. Sometimes they were so unqualified that he could not bring himself to advance them.²²⁰ For the most part, however, favored candidates did make it through to Commissioner O'Brien for appointment:

Q. But at the Associate Probation Officer level, when you received a name from the Commissioner's office, you approved the name, isn't that correct?

A. Yeah, if -- unless you were -- and I'm not making this as a joke against these people -- unless you were really, really -- and I mean really bad -- everybody kind of made the list. I mean, you had to be really bad.

²¹⁸ Testimony of William Burke, July 22, 2010 (Exhibit 96), at 26.

²¹⁹ Testimony of William Burke, July 22, 2010 (Exhibit 96), at 25-27.

²²⁰ Testimony of William Burke, July 22, 2010 (Exhibit 96), at 32-34.

Q. If you could walk and talk and you had been recommended by the Commissioner's office for an Associate Probation Officer position, you got approved by Bill Burke?

A. Yeah.

Testimony of William Burke, July 22, 2010 (Exhibit 96), at 33-34.

289. Burke also testified that he received calls directly from politicians, including Representative Petrolati, with respect to associate probation officer hiring. He stated that when he received such calls, he would not always pass them along to OCP, but might act on them directly.²²¹

290. Jeff Akers, who also participated in associate probation officer interviewing, similarly testified that he received named of favored candidates from Deputy Commissioner Tavares in connection with associate probation officer interviews:

Q. Can you just describe for me briefly what happened in those circumstances?

A. What circumstances?

Q. If you were given, let's start with prior to interviewing.

A. Okay. We were given prior to interviewing that certain individuals should be on the top of the list. Those individuals were put on the top of the list.

* * *

Q. And what did Ms. Tavares say to you?

A. She would state the names of the people that needed to be put on that list.

Q. And what did she tell you with respect to those individuals?

A. That was basically it.

Q. That they were to be put on the top of the list?

²²¹ Testimony of William Burke, July 22, 2010 (Exhibit 96), at 39-40.

A. Mm-hmm.

Q. And what did you do with that information?

A. I usually used the information to put those individuals on the top of the list.

Testimony of Jeffrey Akers, August 25, 2010 (Exhibit 92), at 35-37.

291. In some instances, Akers told us he was given names of recommended candidates after the interviewing process had been completed. When that happened, the interview panel would go back and re-rank the candidates to ensure that the favored candidates made the list:

Q. I just want to go back for a minute to the associate probation officer interviewing process, and I believe at one point in time you said there were instances where you were given names after the interviewing process had occurred?

A. It's possible, yes, that we were given names. Sometimes we would conduct the interviews and then we were called and said these individuals need to be on that list.

Q. Did this occur before or after you had already ranked the individuals?

A. Usually before we had ranked them.

Q. And what did you do with that information you were given about individuals who needed to be ranked highly?

A. We would go back and review the information and on the occasions when we were called, we were able to rank those people where they needed to be ranked.

Testimony of Jeffrey Akers, August 25, 2010 (Exhibit 92), at 65.

292. Akers testified that this process began in 2000.²²² It was Akers' understanding that his co-interviewers were also receiving names of candidates to be ranked at the top of the list for associate probation officer interviews.²²³ In other instances Akers discussed the list of top-

²²² Testimony of Jeffrey Akers, August 25, 2010 (Exhibit 92), at 39.

²²³ Testimony of Jeffrey Akers, August 25, 2010 (Exhibit 92), at 37-38.

ranked candidates with others who served on interview panels with him. He testified that with respect to Deputy Commissioner Pat Walsh, “[w]e talked about different people that needed to be there.”²²⁴

293. As with probation officer hiring, Akers testified that he put the candidates recommended by the Commissioner’s Office for associate probation officer positions at the top of the list “because that’s what [he] was instructed to do.”²²⁵

G. Final Interview Panels (Other Than Chief Probation Officers)

294. Independent Counsel also confirmed that names of favored candidates were provided to interviewers at the final round of interviews.

295. Deputy Commissioner Tavares testified that, with respect to the final round of interviews for probation officer and assistant chief probation officer candidates, she obtained names of favored candidates from Commissioner O’Brien and provided them to Deputy Commissioners Wall and Walsh in advance of the final interviews.²²⁶

296. Her understanding was that, in doing so, she was communicating to Wall and Walsh that the designated candidates should be ranked highest:

Q. And so the Commissioner would say, tell Fran Wall that these are the people I want to see get ranked the highest at his review level?

A. Yeah, take a good look at them, kind of thing.

Q. And when you say, “take a good look at them,” presumably they’re taking a good look at everybody, right?

A. Presumably, but I think the folks that are recommended, maybe a more keen eye towards them.

²²⁴ Testimony of Jeffrey Akers, August 25, 2010 (Exhibit 92), at 37-38.

²²⁵ Testimony of Jeffrey Akers, August 25, 2010 (Exhibit 92), at 40.

²²⁶ Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 72-73, 125.

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Q. And it was you understanding that the Commissioner was really intending you to pass along, these are the people that I want to see at the top of the list?

A. I think so.

Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 73-74.

297. Deputy Commissioners Wall and Walsh both invoked their privileges under the Fifth Amendment and/or Article 12 and refused to testify. Independent Counsel does not have direct testimony from them concerning their use of the names provided by Tavares.

298. Other evidence is nonetheless compelling. Edward McDermott, formerly a practicing attorney, who was Administrative Assistant to Deputy Commissioner Wall (with responsibility for Interstate Compact issues), sat on the final interview panels with either Wall or Walsh. He provided unambiguous testimony that scoring for the probation officer and assistant chief probation officer candidates was rigged at the final interview level.

299. According to McDermott, the first time he participated in a final interview panel with Wall, Wall provided him the names of favored candidates and informed him that these candidates needed to be scored most highly:

Q. Okay. Tell us what the first instance was.

A. We were engaged in the process of interviewing the final panel of applicants and at some point, once we've started the interviews Deputy Commissioner Wall says to me "And, by the way, the commissioner's top choice is Joe Jones or Mary Jones." And I says, "Well, what does that mean?" And he said to me, "That means that that candidate has to get the highest score in the interview."

Testimony of Edward McDermott, August 25, 2010 (Exhibit 116), at 32-33.

300. McDermott further testified that the same practice was followed with Walsh:

A. ... And what I say with regard to Mr. Wall also occurred with Patricia Walsh. She would come down into the

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interview room – I never left the interview room – she would come down and do the same thing.

* * *

Q. But describe the process that actually occurred.

A. [E]ither Fran Wall or Patricia Walsh would tell me before the interview or before the candidate, the selected one as they call, or the commissioner's choice, he or she would tell me that this is the candidate that the commissioner wants to score the highest.

Testimony of Edward McDermott, August 25, 2010 (Exhibit 116), at 34-35.

301. McDermott testified that “every time there was a panel, Fran Wall made known to [him] that this candidate was the commissioner's top choice,” and that the same was true with respect to panels on which he sat with Walsh.²²⁷

302. McDermott admitted that the instructions he received from Wall and Walsh dictated his scoring of candidates:

Q. Do you mean by that that there were occasions in which you scored the commissioner's choice more highly than you believed that candidate should have been given on the merits because you believed that you had been ordered to do so?

A. I would have to agree with that statement. And I can say I can't quantify it for you, but I will tell you that yes, I did stretch, if you want to call stretch score, that would be a fair statement.

* * *

Q. Putting it differently, you were not scoring the candidates strictly on the merits of their qualifications and interview. Is that correct?

A. I would agree with that.

Testimony of Edward McDermott, August 25, 2010 (Exhibit 116), at 37, 47.

²²⁷ Testimony of Edward McDermott, August 25, 2010 (Exhibit 116), at 33, 35.

303. According to McDermott, Wall looked at McDermott's scoring sheet before scoring the candidates himself, ensuring that the combined score for O'Brien's top candidate was in fact the highest:

Q. Was it your understanding that [Deputy] Commissioner Wall wanted to know your score before he entered his scores so that he could be sure that the commissioner's choice was the highest score?

A. Exactly.

Q. And did you in fact give him your score sheet so that he could rank the commissioner's choice the highest? Did you understand, in other words, that's what he was doing with your score?

A. I did understand that, yes.

Testimony of Edward McDermott, August 25, 2010 (Exhibit 116), at 54.

304. On some occasions, Wall asked McDermott to falsely rescore a candidate:

A. And once again in a general way, because I can't point you to a specific situation, but I do remember Fran Wall after I told him my score, whatever that score may be, he said to me, paraphrasing, "What'd you get? What did you give the candidate on question 2" or whatever the question was. I said "I gave him a 2. I have a 2 roughed out." And he said, "Can you live with making that a 3?" I would say, "Well, okay," and I'd make it a 3.

Testimony of Edward McDermott, August 25, 2010 (Exhibit 116), at 55-56.

305. In addition to McDermott, Regional Supervisor Rideout also testified that he was provided the names of sponsored candidates by Deputy Commissioner Wall on the final panel, but he did not provide much additional detail.²²⁸

²²⁸ Testimony of Edward Rideout, August 27, 2010 (Exhibit 129), at 132.

H. Final Interview Panels (Chief Probation Officers)

306. Both First Deputy Commissioner Tavares and former First Deputy Commissioner Cremens recall being provided the names of preferred candidates from Commissioner O'Brien in advance of final round interviews for chief probation officer candidates.

307. For example, Tavares testified that Commissioner O'Brien "would let John [Cremens] and I know that somebody was recommended."²²⁹

308. Cremens remembered being provided the names of favored candidates by Commissioner O'Brien. For example, he confirmed Tavares' testimony (*see supra*, ¶ 154) that, with respect to the hiring of James Rush (father of Representative Michael Rush) to the chief probation officer position in West Roxbury, the Commissioner had identified Rush as the preferred candidate:

Q. One way or the other, do you remember Commissioner O'Brien before Jim Rush or Mark Prisco became the successful candidates stating to you that he had a preference for them for those positions?

A. I think Jim Rush, he said that he got calls on Jim Rush's case.

Testimony of John Cremens, August 6, 2010 (Exhibit 102), at 53.

309. In all cases, it was Deputy Commissioner Tavares' understanding that the names were being provided so that the preferred candidates would be scored more highly by the final interview panel than they otherwise would have been, absent the indication of preference:

Q. Was it your understanding that when the Commissioner was giving you a name on the day of the interview that he wanted you to try and score that person most highly?

A. To some degree, I guess.

Q. Is that a yes?

²²⁹ Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 106.

A. Well, to some degree.

Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 115.

310. The Commissioner's identification of a "recommended candidate" to Tavares and Cremens almost always resulted in that person being ranked highest by Tavares (as well as Cremens and O'Brien).²³⁰

311. Tavares testified that she could think of only one occasion in which the favored chief probation officer candidate was not scored the highest by the final interview panel. On that occasion, another candidate was so much better than the favored candidate that the panel ranked her most highly, and she received the position.²³¹

I. Community Corrections Centers

1. Probation Officers In Charge

312. There is evidence that the Commissioner's Office influenced the interview process for probation officer in charge positions.

313. John Quinn, Regional Program Manager for the Office of Community Corrections sat on many of the probation officer in charge interview panels. Quinn testified that in most of the panels in which he participated, the representatives from the Commissioner's Office provided "recommendations" for particular candidates. Quinn stated that during the probation officer in charge interviews Deputy Commissioners Francis Wall and Elizabeth Tavares and Regional Supervisors Frank Campbell and Edward Rideout each provided him with names of

²³⁰ Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 115.

²³¹ Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 119-21.

recommended candidates.²³² Quinn understood these individuals to be offering the recommendations on behalf of the Commissioner's Office.²³³

314. Quinn testified that during the interviews, either before or after a candidate came in, the Commissioner's representative told him that that person was a "very good candidate."²³⁴ Quinn said he was seldom provided with additional information. Quinn was content to take the individuals from the Commissioner's Office at their word that the person would be a good probation officer in charge.²³⁵

315. Quinn relied on and was "guided by" the deputy commissioner and regional supervisors because he believed they had worked with these candidates and had knowledge of the candidates' capabilities.²³⁶ Having worked in OCC and not the Probation Department, Quinn deferred to the recommendations from the Commissioner's Office and testified that he would often score a recommended candidate higher than he would have based purely on the interview.²³⁷ In instances where Quinn knew the applicants, he felt more comfortable scoring them on his own but that he never disregarded any of the recommendations he was given.²³⁸ The recommendations he received were a factor in how he scored the candidates.²³⁹

316. Quinn advised that he did not think there was anything improper going on in regard to these recommendations. He did not believe the recommendations were being offered for any other reason that the Commissioner's office felt that these candidates would, in fact, be

²³² Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 36-40, 61-63, 85.

²³³ Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 53-54, 79-81, 85, 92-93.

²³⁴ Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 37.

²³⁵ Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 64-65.

²³⁶ Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 40-43, 50-51.

²³⁷ Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 40-42.

²³⁸ Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 42-43, 77-82.

good probation officers in charge. Quinn became emotional during his testimony when explaining that he believed the goal of the interview process was to get the best candidates and he felt that is what happened.²⁴⁰

317. Despite Quinn's protestations in instances in which the Commissioner's Office recommended a particular candidate, that candidate was scored the highest and ultimately got the job.²⁴¹

318. Accordingly, in the probation officer in charge context, while the influence the Commissioner's Office exerted was more subtle – Quinn testified that he never felt pressured or obliged to score certain candidates highly – the result was the same: the recommended candidates were scored higher than they should have been based solely on the merits of their interview and were ultimately selected for the probation officer in charge positions.²⁴²

2. *Community Corrections Positions*

319. Within the Office of Community Corrections, there is evidence that Executive Director Stephen Price provided names of recommended candidates to interviewers, although it is less clear that this influenced hiring within OCC.

320. Executive Director Price testified that he routinely received calls from many politicians or their staff, including Representative Petrolati, former Speaker DiMasi, Speaker DeLeo, former Representative John Rogers, Senator Brewer, Senator Menard, Senator

²³⁹ Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 87.

²⁴⁰ Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 51-52, 121.

²⁴¹ Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 47-48, 67-68, 74-75, 85-88, 91-93.

²⁴² Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 51.

Antonioni, Senator Hart, Representative Walsh, and Representative Haley, recommending candidates for OCC positions.²⁴³

321. Price testified that he passed along these recommendations to interviewers only in cases where he had indicated to the legislator that he was going to inform the candidate that a call had been made on his or her behalf.²⁴⁴ Price testified that these recommendations were considered as part of the interview process, as was any recommendation, but they did not influence hiring decisions.²⁴⁵ Price “did not recall” giving any special consideration to any candidates who received a recommendation for a legislator and did not advance candidates to the next round of interviewing on that basis.²⁴⁶

322. Price stated that he did not keep track of these recommendations in any formal way and at most he wrote the name on a piece of paper that he threw away once he had passed the information along.²⁴⁷ Price testified that he believed that any letters of recommendation received were included as part of the candidate’s application package.²⁴⁸

323. Patricia Horne, Deputy Director of OCC, testified that she was given names as described by Price. Horne testified each time she conducted an interview for OCC, she was given the names of candidates and was instructed to inform them that a particular legislator had called on their behalf.²⁴⁹ Horne testified that she did not give these candidates any favored or

²⁴³ Testimony of Stephen Price, October 22, 2010 (Exhibit 126), at 95-96, 100,107-08, 113. Price testified that he knew many of these legislators from speaking to them regarding OCC’s budget. *Id.* at 42-45. O’Brien was often present at these budget meetings as well. *Id.* at 44.

²⁴⁴ Testimony of Stephen Price, October 22, 2010 (Exhibit 126), at 118-119.

²⁴⁵ Testimony of Stephen Price, October 22, 2010 (Exhibit 126), at 103-104, 120-21, 138.

²⁴⁶ Testimony of Stephen Price, October 22, 2010 (Exhibit 126), at 117

²⁴⁷ Testimony of Stephen Price, October 22, 2010 (Exhibit 126), at 116-117, 120.

²⁴⁸ Testimony of Stephen Price, October 22, 2010 (Exhibit 126), at 120.

²⁴⁹ Testimony of Patricia Horne, October 4, 2010 (Exhibit 112), at 75-80.

preferential treatment because they had received a recommendation from a legislator.²⁵⁰ She similarly testified that such recommendations did not affect her ranking or scoring of the candidates she interviewed.

324. Independent Counsel does not credit this testimony. Price described himself as extremely close to Commissioner O'Brien, and it is not credible that O'Brien would rig hiring within the Probation Department, but not within OCC, nor that Price would refuse such instructions from O'Brien.

J. Hiring Within ELMO

325. The names at the top of the ELMO hierarchy create the immediate impression that ELMO has been used by Commissioner O'Brien for patronage appointments. The group has three regional program managers: Edward Ryan, Commissioner O'Brien's former legislative liaison; Kathleen Petrolati, wife of Representative Thomas Petrolati; and Eugene Irwin, son of former Chief Justice for Administration and Management John Irwin, who appointed O'Brien as Commissioner.

326. Deputy Commissioner Lucci confirmed that he received names of preferred candidates from OCP – including from Commissioner O'Brien himself – with the instruction that the identified candidates should make the list of finalists provided to Commissioner O'Brien for his selection:

Q. Prior to the interviews, would anyone in the Office of the Commissioner of Probation let you know if there were any candidates that the commissioner wanted to see make it to some final round of interviews?

A. Yes.

Q. How would that work?

²⁵⁰ Testimony of Patricia Horne, October 4, 2010 (Exhibit 112), at 76-77.

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A. I'm pretty sure someone would say to me give these people consideration.

Q. Who would tell you that?

A. I would think it would come from either the commissioner or Liz Tavares.

Q. Do you recall instances in which the commissioner asked you to give consideration to particular candidates?

A. Not specifically, no.

Q. When you say "not specifically," generally speaking do you remember that there was some conversation with the commissioner where he asked you to do that?

A. I would say yes.

Testimony of Paul Lucci, August 23, 2010 (Exhibit 114), at 63-64.

327. Lucci understood that to accomplish this, he should if necessary rank the preferred candidates higher than they deserved on the merits. He complied with this because he viewed it as following orders:

Q. I'm just trying to figure out what it means to give a good look or give consideration to somebody where you should be giving a good look and consideration to all the candidates. Right? So the reason why the commissioner or somebody else in the office would call you to single out a particular candidate is to try to get you to maybe rank that person a little bit higher than you might otherwise ordinarily. Right?

A. I would say so, yes.

* * *

Q. Did you view it as sort of following orders if the commissioner said give this person a good look?

A. Absolutely.

Q. So you figured, look, I'm being told to do this by the commissioner, I'm not going to question it?

A. Right.

Testimony of Paul Lucci, August 23, 2010 (Exhibit 114), at 66-67.

K. Other Hiring

328. Beyond the positions discussed above, there is also evidence of manipulation of the hiring practices for administrative and training positions within the Probation Department. In hiring incidents related to these positions, the evidence indicates that the Commissioner's Office pre-selected the successful candidate and ignored the interview process.

329. For example, Chief Probation Officer Michael LaFrance testified that the Commissioner's Office hired an individual who was not on the list of finalists for an entry level clerical position. LaFrance testified that he and the probation office manager interviewed over seventy candidates for two clerical positions. They submitted, at most, five or six names to the Commissioner's Office as finalists for the positions. The Commissioner's Office did not provide any names of preferred candidates during the interview process, but an individual that was not on LaFrance's list of finalists was hired for the position. LaFrance testified that the Commissioner's Office did not conduct any additional interviewing but simply chose one of the less qualified candidates that LaFrance and his co-interviewer had weeded out during the interview process.²⁵¹

330. Deputy Commissioner Stephen Bocko also testified that hiring was rigged for positions at the Probation Training Academy in Clinton.

331. Bocko testified that in approximately 2004 or 2005, he was involved in interviews for a chief probation officer position in the Training Academy. Bocko stated that a year prior to that, the Commissioner's Office, without consulting Bocko, appointed Renee Payne as an Acting Chief Probation Officer in the Training Academy. The Commissioner then decided to make

²⁵¹ Testimony of Michael LaFrance, September 29, 2010 (Exhibit 113), at 93-96, 101-103.

Payne a permanent employee without any formal interview process. According to Bocko, AOTC pushed back on the permanent appointment and informed O'Brien that the job had to be posted and opened up to the department as a whole.²⁵²

332. Following the direction from AOTC but before interviewing began, Deputy Commissioner Tavares told Bocko that the Commissioner wanted Renee Payne to remain in the position.²⁵³ Bocko testified that despite knowing that Payne was going to receive the job, he and Tavares went through the motions of conducting interviews and scoring and ranking the candidates.²⁵⁴ The Commissioner ultimately selected Payne for the position:

- Q. Do you recall if there was some magic number you were supposed to come up with out of this seven or eight?
- A. In terms of scoring the applicants?
- Q. In terms of –
- A. Final list?
- Q. Who could move on to the decisionmaker?
- A. I was told more pointedly that Renee Payne was to get the job.
- Q. So this was just going through the actions, but everyone knew that she was going to get the job?
- A. Well, not everyone. But I was told that she was to get the job.
- * * *
- Q. ...Describe that conversation with Ms. Tavares?
- A. Again, I can't remember the exact words. The substance of it was the commissioner wanted Renee to maintain that chief's job at the training academy.

²⁵² Testimony of Stephen Bocko, September 13, 2010 (Exhibit 94), at 78-83.

²⁵³ Testimony of Stephen Bocko, September 13, 2010 (Exhibit 94), at 83-85.

²⁵⁴ Testimony of Stephen Bocko, September 13, 2010 (Exhibit 94), at 83-86.

* * *

Q. But you conducted these interviews knowing that in the end Ms. Payne would be selected for the job?

A. I did.

Testimony of Stephen Bocko, September 13, 2010 (Exhibit 94), at 84-85.

333. Bocko testified that in 2006 he also sat on an interview panel with Regional Supervisor Dianne Fasano for a building supervisor job at the Training Academy. He testified that the decision who was going to fill the position was “predetermined.”²⁵⁵ Prior to conducting interviews, Tavares informed Bocko that Commissioner O’Brien made the decision that Bruce Bazydlo was going to receive the job:²⁵⁶

Q. But for the directive from Ms. Tavares that Mr. Bazydlo would be selected for the position, would you have selected him for that position?

A. I don’t know because I was told ahead of time what was going to happen.

Q. Was Ms. Fasano informed of that as well?

A. Yes, Dianne knew that as well.

Q. Did you and Ms. Fasano talk about this fact that the person that would fill the position was predetermined?

A. We did briefly.

Q. What was that conversation?

A. I believe I said to her we’re just going to be going through the motions, but it was necessary, because the commissioner had made a decision; and she felt the same way; and we did the interviews.

Testimony of Stephen Bocko, September 13, 2010 (Exhibit 94), at 89-90.

²⁵⁵ Testimony of Stephen Bocko, September 13, 2010 (Exhibit 94), at 87-88.

²⁵⁶ Testimony of Stephen Bocko, September 13, 2010 (Exhibit 94), at 88-89.

334. Bocko testified that after Bazydlo had been hired, Bazydlo informed Bocko that he believed he got the job because he was sponsored by Representative Harold Naughton.²⁵⁷ One of the Sponsor Lists maintained by Maria Walsh reflects that Rep. Naughton offered a recommendation for Mr. Bazydlo for the “Clinton custodian job.”

335. Around the same time, Bocko also conducted interviews for a Program Manager position at the Training Academy. Deputy Commissioner Tavares told Bocko prior to the interviews that Dianne Richard was “the person the Commissioner thought should get the job” and she was going to be receiving the position.²⁵⁸

336. After she was hired, Richard informed Bocko that she too had also been sponsored by Rep. Naughton.²⁵⁹

IV. IDENTIFICATION OF CANDIDATES SPONSORED BY POLITICIANS

337. As detailed above, those involved in the hiring process consistently testified that they received from the Commissioner’s office the names of candidates whom, they understood, must be scored higher than was merited.

338. Commissioner O’Brien’s assertion of his Fifth Amendment and Article 12 rights prevented Independent Counsel from receiving direct testimony from him. The evidence, however, leads to the conclusion that the individuals who were being singled out as “favored” typically were those with the greatest political, and occasionally judicial, connections.

²⁵⁷ Testimony of Stephen Bocko, September 13, 2010 (Exhibit 94), at 88-89.

²⁵⁸ Testimony of Stephen Bocko, September 13, 2010 (Exhibit 94), at 90-91.

²⁵⁹ Testimony of Stephen Bocko, September 13, 2010 (Exhibit 94), at 91.

A. The Collection of Names from Politicians, Judges, and Others

339. Candidates for hiring into or promotion within the Department were required to list references and could provide letters of recommendation with job applications. Outside of this formal process, however, there was an informal sponsorship process.

340. Members of the legislature and others called or sent letters to OCP on behalf of a particular candidate. An overwhelming majority of those sponsoring candidates were state legislators. While there were some judges, probation officers, police officers and attorneys, most of the sponsors were state senators and representatives. As legislative liaison Maria Walsh testified:

Q. Would you say that legislators were the leading group of people offering recommendations for candidates?

A. Yes.

Testimony of Maria Walsh, July 19, 2010 (Exhibit 139), at 46.

341. Names of “sponsored” candidates came into a select few within OCP. State representatives and senators (or members of their staffs), judges and other individuals employed by the Trial Court contacted O’Brien directly (and through his assistant Lucia Vanasse), as well as through legislative liaisons – Michelle Cahill Martino, Maria Walsh, and Edward Ryan.²⁶⁰ Legislators from Western Massachusetts also contacted Deputy Commissioner Burke to offer their sponsorship, which Burke sometimes acted on directly and sometimes passed along to Boston.²⁶¹

342. Legislators providing “sponsorship” did so typically by telephone call, although OCP also received some letters of recommendation for particular candidates. Fewer than 100

²⁶⁰ Testimony of Michelle Cahill Martino, July 21, 2010 (Exhibit 97), at 35-36; Testimony of Maria Walsh, July 19, 2010 (Exhibit 139), at 46-48; Testimony of Edward Ryan (Exhibit 131), June 29, 2010, at 41-42.

²⁶¹ Testimony of William Burke, July 22, 2010 (Exhibit 96), at 24, 28.

letters of recommendation from legislators were produced or found in OCP's files, while there are thousands of entries recorded on so-called "Sponsor Lists."

343. Martino testified that from the time she came to OCP and was assigned to work on legislative matters (sometime in 2004), she fielded calls from legislators sponsoring candidates for positions within the Department. Commissioner O'Brien and his assistant, Lucia Vanasse, also provided her with names of candidates who had been sponsored. Martino testified that she received a large volume of calls, and documents she produced reveal that the number of sponsorships coming in from legislators increased significantly in the time period from 1999 to 2001.²⁶²

344. Martino took messages from these callers for Commissioner O'Brien. Messages contemporaneously made by Martino demonstrate that politicians made specific requests for the candidates they were sponsoring. For example, one note reflecting a call from Representative William McManus states, "has PO he wants to take care of, 70,000 salary range – wants details re: Don Moran – any suggestions for creating regional person."²⁶³ In another message to O'Brien, Martino wrote, "I spoke w/ Rep. Candaras this morning. She's asking for PO candidate Michael Wells to be sent to the judge on the finalist list."²⁶⁴

345. Martino also received calls from legislators following up on the candidates they had sponsored. Notes from Martino show that a member of Senator Pacheco's staff called

²⁶² Testimony of Michelle Cahill Martino, October 1, 2010 (Exhibit 97), at 23.

²⁶³ A copy of the phone messages taken by Cahill Martino, and marked as exhibits 9 through 21 during her testimony, accompanies this Report as Exhibit 97. *See also* testimony of Michelle Cahill Martino, October 1, 2010 (Exhibit 97), at 29-30.

²⁶⁴ A copy of the phone messages taken by Martino, and marked as exhibits 9 through 21 during her testimony, accompanies this Report as Exhibit 97. *See also* testimony of Michelle Cahill Martino, October 1, 2010 (Exhibit 97), at 53-54.

wanting to know why a certain candidate did not make the finalist list.²⁶⁵ Martino's notes indicate that she kept the legislators posted on the status of their candidates. On a recommendation letter from Rep. Nyman written for Elzy Tubbs, Martino wrote, "10/6 spoke with Rob (aid) will be interviewed."²⁶⁶

346. Sometime in 2004, Martino was informed by Commissioner O'Brien or John Cremens that she no longer had responsibility for taking calls regarding sponsorships. Maria Walsh took over receiving such calls for Probation Department candidates. While Martino testified she still occasionally received these calls, she forwarded those calls to Maria Walsh.²⁶⁷

347. When Walsh took over responsibility for handling sponsorships, she testified that she received phone calls from individuals sponsoring candidates directly, but more often the calls went to Commissioner O'Brien. O'Brien provided her the names of individuals he was given.²⁶⁸ Walsh testified that during the hiring process, a substantial volume of calls were received. Phone messages from February 17, 2005 taken by Ms. Walsh for O'Brien show that in a single day, Commissioner O'Brien received calls from six different senators and representatives, or their staffs, sponsoring seventeen candidates. Notably, Walsh testified that this volume was a small number of calls to receive in one day during the hiring season.²⁶⁹

²⁶⁵ A copy of the phone messages taken by Martino, and marked as exhibits 9 through 21 during her testimony, accompanies this Report as Exhibit 97. *See also* testimony of Michelle Cahill Martino, October 1, 2010 (Exhibit 97), at 62-64.

²⁶⁶ A copy of the phone messages taken by Martino, and marked as exhibits 9 through 21 during her testimony, accompanies this Report as Exhibit 97. *See also* testimony of Michelle Cahill Martino, October 1, 2010 (Exhibit 97), at 65-66.

²⁶⁷ Testimony of Michelle Cahill Martino, July 21, 2010 (Exhibit 97), at 89-90, 96-97.

²⁶⁸ Testimony of Maria Walsh, July 19, 2010 (Exhibit 139), at 15-16.

²⁶⁹ Testimony of Maria Walsh, July 19, 2010 (Exhibit 139), at 166.

348. Walsh also testified that she often called the legislators to inform them whether or not their candidate was qualified for the requested position.²⁷⁰

349. Martino and Walsh, both testified that the sponsoring individuals did not provide any substantive information regarding the candidate.²⁷¹

Q. Did you ever have any substantive discussions with anyone who called for a recommendation about the substance of the recommendation they were making?

A. Not that I can recall.

Q. So it was purely, here's the name, here's the position; I've noted it; we're all set.

A. Yes.

Testimony of Maria Walsh, July 19, 2010 (Exhibit 139), at 133-134.

350. Lucia Vanasse, O'Brien's administrative assistant, testified that she frequently receives calls and takes messages from individuals, including legislators and their staff members, calling the Commissioner to sponsor candidates for positions.²⁷² The Commissioner often returned the call and asked Vanasse to provide Maria Walsh the names of the sponsored candidates.²⁷³

351. Edward Ryan also testified that he received calls from legislators. Ryan kept handwritten notes of the calls he received, which were produced to Independent Counsel. Ryan testified that he received calls from high ranking members of the legislature including Senate President Therese Murray, Senator Steven Panagiotakis, Senator Marc Pacheco, Senator Robert Travaglini, Senator Steven Baddour, Senator Stephen Buoniconti, Senator Robert Creedon,

²⁷⁰ Testimony of Maria Walsh, July 19, 2010 (Exhibit 139), at 26-28.

²⁷¹ Testimony of Michelle Cahill Martino, July 21, 2010 (Exhibit 97), at 38-39; Testimony of Maria Walsh, July 19, 2010 (Exhibit 139), at 133-134.

²⁷² Testimony of Lucia Vanasse, July 20, 2010 (Exhibit 138), at 31.

Speaker Salvatore DiMasi, Speaker Robert DeLeo, and Representative Eugene O’Flaherty among others.²⁷⁴

352. Ryan testified that he discussed the calls he had received with Commissioner O’Brien.²⁷⁵ According to Ryan, the Commissioner also received calls directly from politicians and others.²⁷⁶ O’Brien provided Ryan the names of the candidates and asked Ryan to confirm that they were minimally qualified for, and had actually applied for, the position(s) for which they had been sponsored.²⁷⁷ Ryan produced original notes in O’Brien’s handwriting with names of candidates who were sponsored and the individuals sponsoring them.²⁷⁸

353. Ryan testified that he understood part of his function when appointed to the legislative liaison position by the Commissioner was to handle the influx of calls.²⁷⁹ He testified that his role was to deal with members of the House and Senate, while Maria Walsh kept track of logistics.²⁸⁰

B. Sponsor Lists

354. Throughout this process while the names of sponsored candidates were being collected, the names of some – but not all – of the candidates were logged, together with the names of the sponsors, on documents known within OCP as “Sponsor Lists.” The Sponsor Lists

²⁷³ Testimony of Lucia Vanasse, July 20, 2010 (Exhibit 138), at 45.

²⁷⁴ Testimony of Edward Ryan, June 29, 2010 (Exhibit 131), at 73-77, 154.

²⁷⁵ Testimony of Edward Ryan, June 29, 2010 (Exhibit 131) , at 42.

²⁷⁶ Testimony of Edward Ryan, June 29, 2010 (Exhibit 131), at 42.

²⁷⁷ Testimony of Edward Ryan, June 29, 2010 (Exhibit 131), at 42.

²⁷⁸ Testimony of Edward Ryan, July 21, 2010 (Exhibit 131), at 218-236. A copy of these handwritten notes, marked during Ryan’s testimony as exhibit 11, accompanies this Report as Exhibit 131.

²⁷⁹ Testimony of Edward Ryan, June 29, 2010 (Exhibit 131), at 52.

²⁸⁰ Testimony of Edward Ryan, June 29, 2010 (Exhibit 131), at 52-54.

are spreadsheets maintained initially by Michelle Cahill Martino, and later by Maria Walsh.²⁸¹

O'Brien directed Martino and Walsh to compile the Sponsor Lists.²⁸²

355. Several of these Sponsor Lists were produced by Walsh and Ryan. Based on the date ranges indicated on the Lists, Independent Counsel was not provided with all of the lists. Exemplars of these spreadsheets accompany this Report as Exhibit 32.

356. The Sponsor Lists created by Martino list the name of the candidate, the position the candidate is applying for, and – in a column often labeled “Sponsor” – the individual who had called or sent in a letter on the candidate’s behalf.²⁸³

357. Martino testified that every “recommendation” she received by telephone or by letter was recorded on the Sponsor List, regardless whether the sponsor was a legislator.²⁸⁴ The spreadsheets, however, reveal that for fiscal years 1999-2001, all but 13 of the 119 sponsors is a state representative or senator.²⁸⁵ The Sponsor Lists, in other words, are not simply lists of recommendations, but constitute a record of support given to candidates by legislators with political influence over the Department.

358. The Sponsor Lists Martino created also tracked the progress of candidates through the process. They include an “outcome” column which tracks whether the candidate received an interview, became a finalist and ultimately was given a position.²⁸⁶

²⁸¹ Testimony of Michelle Cahill Martino, July 21, 2010 (Exhibit 97), at 126-27; Testimony of Maria Walsh, July 19, 2010, at 17.

²⁸² Testimony of Michelle Cahill Martino, July 21, 2010 (Exhibit 97), at 49-50; Testimony of Maria Walsh, July 19, 2010 (Exhibit 139), at 18.

²⁸³ Sponsor Lists created by Michelle Cahill Martino, which can be found in Exhibit 32.

²⁸⁴ Testimony of Michelle Cahill Martino, July 21, 2010 (Exhibit 97), at 40-41.

²⁸⁵ Sponsor Lists created by Michelle Cahill Martino, which can be found in Exhibit 32..

²⁸⁶ Sponsor Lists created by Michelle Cahill Martino, which can be found in Exhibit 32.

359. Maria Walsh began compiling the Sponsor Lists sometime in 2004. Walsh had extensive political knowledge and connections prior to joining OCP. She was employed as a paralegal at former Speaker Thomas Finneran's law firm and then served as office manager for Finneran. Walsh also worked for the chief of staff and budget director for the House Ways and Means Committee when Finneran was Chairman.²⁸⁷

360. The Sponsor Lists Walsh created contained the name of the sponsor offering the recommendation, the name of the sponsored candidate, and often the position the candidate was applying for. Unlike Martino's spreadsheets, Walsh's spreadsheet did not track the outcome of each sponsored candidate.²⁸⁸ This may have been due to the fact that the Sponsor Lists grew from 1 to 2 page documents in 1999 to dozens of pages long by 2005.

361. Like Martino, Walsh testified that she entered all "recommendations" received for a candidate on the Sponsor List.²⁸⁹ The documents, however, reflect that the great majority of candidates on Walsh's lists were sponsored by legislators.²⁹⁰

362. The Sponsor Lists are extensive, with some sponsors supporting numerous candidates for positions. Two of the legislative liaisons, Maria Walsh and Edward Ryan, produced over 130 pages of Sponsor Lists for the 2004 – 2007 time period.

363. During both Martino's and Walsh's tenures, it was not uncommon for legislators to sponsor multiple candidates. Indeed, Speaker DiMasi had his own spreadsheet of sponsored

²⁸⁷ Testimony of Maria Walsh, July 19, 2010 (Exhibit 139), at 52.

²⁸⁸ Sponsor Lists created and produced by Maria Walsh, which can be found in Exhibit 32.

²⁸⁹ Testimony of Maria Walsh, July 19, 2010 (Exhibit 139), at 17-18.

²⁹⁰ Sponsor Lists created and produced by Maria Walsh, which can be found in Exhibit 32.

candidates. A spreadsheet entitled, “DiMasi, Speaker Sal” and dated January, 2007 lists sixteen different candidates he sponsored for various positions within the Probation Department.²⁹¹

364. In some instances, where a sponsor was supporting multiple candidates, the Sponsor Lists reflect what appear to be a ranking of preference by the sponsors. In several places the sponsor’s name is listed together with several candidates, whose names are ranked, *e.g.*, one through four.²⁹² It appears, in other words, that legislators were ranking their preferred candidates even within the group of candidates they were recommending.

365. During hiring periods, Commissioner O’Brien and Edward Ryan obtained copies of the Sponsor Lists. Ryan testified that he used the list to track the progress of the sponsored candidates, trying to ensure that they progressed through the rounds of interviews. Ryan also received copies of the lists of final candidates:

Q. ...I mean, were you – was it understood that one of the things you were supposed to do was keep an eye out for highly-recommended candidates from, say, leadership and be sure they were getting from list to list up to the final list?

A. Yes.

Testimony of Edward Ryan, June 29, 2010 (Exhibit 131), at 95.

C. The Decision of which Candidates to Prefer

366. There was some testimony that all persons “recommended” by legislators were put on the Sponsor Lists. The evidence suggests that is not the case, however. Senator Montigny produced letters of recommendation he had written on behalf of constituents, though many of these individuals’ names were not found on Sponsor Lists.

²⁹¹ A copy of this Sponsor List can be found in Exhibit 32; *see also* Testimony of Edward Ryan, July 15, 2010 (Exhibit 131), at 239-240.

²⁹² January 27, 2005 Sponsor List, which can be found in Exhibit 32.

367. There was some testimony that an actual letter of recommendation from a legislator was effectively worthless. The letters are typically form letters written on behalf of almost anyone who asks a legislator for one.²⁹³ If a legislator actually cared about a candidate and wanted to see him or her get a position, the legislator (or a member of the staff) called the Commissioner's Office.²⁹⁴

368. Moreover, there is some evidence that not all of the individuals on the Sponsor Lists were provided to the interview panels as favored candidates, and that O'Brien exercised discretion in deciding when and on behalf of whom to manipulate the system.

369. First Deputy Commissioner Tavares testified that based on the volume of calls received by the Commissioner, not every name could be passed along to the interview panels.²⁹⁵

370. Former First Deputy Commissioner Cremens likewise testified that it was his impression that individuals recommended by more powerful legislators had a better chance of getting hired than those recommended by less powerful legislators:

Q. Did you ever talk to Commissioner O'Brien [about] whether there were politicians whose recommendations counted for more than other politicians?

A. Well, I didn't talk to him about it, no, because I thought it was fairly obvious.

Q. Is it obvious that if you're in the leadership of the House, leadership of the Senate, you're going to count for more?

A. That would be my feeling.

²⁹³ Testimony of Robert DeLeo, November 1, 2010 (Exhibit 105), at 26-28; Testimony of Mark Montigny, October 26, 2010 (Exhibit 119), at 61-72; Testimony of Marc Pacheco, October 20, 2010 (Exhibit 125), at 19-23. Relevant excerpts of the testimony of Speaker DeLeo accompany this Report as Exhibit 105. Relevant excerpts of the testimony of Senator Montigny accompany this Report as Exhibit 119. Relevant excerpts of the testimony of Senator Marc Pacheco accompany this Report as Exhibit 125.

²⁹⁴ Testimony of William Burke, July 22, 2010 (Exhibit 96), at 125-26.

²⁹⁵ Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 111-12.

Testimony of John Cremens, August 6, 2010 (Exhibit 102), at 38.

371. Edward Ryan testified that the legislators with the greatest influence were those with leadership positions or seats on the Ways and Means and Judiciary Committees:

Q. Was there an understanding within the Probation Office that certain politicians were to have more clout in the hiring process than others?

A. Yes.

Q. And what was the hierarchy in terms of preferences given to candidates sponsored by politicians?

A. I think the leadership would have more say, and I also -- I would say, yeah, I would say the leadership would be able to carry more weight with the Commissioner.

Q. During the period in which you were involved in these preferential lists, what was the leadership to which you're referring?

A. The Senate president, Senate Ways and Means.

* * *

Q. On the House side, what was the leadership to which you refer?

A. The House side was, when I came in, Speaker DiMasi. House Ways and Means was the now Speaker DeLeo. The chair of the judiciary was, is Gene O'Flaherty

Testimony of Edward Ryan, July 15, 2010 (Exhibit 131), at 153-54.

372. Former Regional Supervisor Nicholas DeAngelis also testified that, in his experience, the higher ranking the legislator, the more pull they had in getting their candidates probation jobs.

Q. Going back to our discussion about having to know someone political in order to get hired or advance in the Probation Department, connected with that, were there any specific politicians who were identified that were better to be connected to than others?

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A. Yeah, the higher up in politics you were. So I would assume it would be Petrolati or DiMasi or someone of that caliber that people were more interested in contributing to.

Q. So it is your understanding that the people who were higher up in the legislature had more pull getting jobs in Probation?

A. That's right.

Testimony of Nicholas DeAngelis, August 24, 2010 (Exhibit 104), at 117-118.

373. Deputy Commissioner Burke, likewise, testified that the support of Representative Petrolati was useful to those seeking promotion within the western Massachusetts counties, in part because the Department's relationship with Representative Petrolati was important to getting Probation's budget maintained at high levels:

Q. Isn't it well known that if you want to get a promotion within the Probation Department it's a good idea to support Representative Petrolati?

A. Do I know that? Are you asking me do I know that?

Q. Yes.

A. Probably help, could help, yeah. Any rep, any Senator, I mean, they're the ones that give us the money.

* * *

Q. I'm not suggesting there are no exceptions, but broadly speaking, you need Representative Petrolati's support if you want to get promoted in Probation, correct?

A. In Hampshire County, Hampden County?

Q. Yes.

A. It would help, yes.

Testimony of William Burke, July 22, 2010 (Exhibit 96), at 67, 71.

374. The Sponsor Lists reflect the greater influence of legislators in leadership or on important committees. The list of the ten-most frequent sponsors (found at Appendix 7) consists

entirely of influential state legislators: former Speaker of the House Salvatore DiMasi; Senate President Robert Travaglini; Senators Steven Panagiotakis, Stephen Brewer, John Hart, and Marc Pacheco (all on Senate Ways and Means); Senator Mark Montigny, previously chairman of Senate Ways and Means; Senator Thomas McGee and former Senator Robert Creedon, on the Senate Judiciary Committee; and Representative Stephen Tobin of Quincy (where Commissioner O'Brien resides), who previously was on the House Judiciary and Ways and Means Committees.²⁹⁶ Speaker of the House DeLeo falls just outside the top 10.

375. On the sponsor lists Ryan produced, he highlighted and/or circled the names of the preferred candidates on the Sponsor List. Those candidates were supported by high ranking legislators such as Senate President Therese Murray, former Speaker Thomas Finneran, then Speaker Sal DiMasi and Chair of the Judiciary Committee, Senator Creedon.²⁹⁷

D. Reasons For Accommodating Legislators

376. Substantial evidence indicates that the Probation Department sought to accommodate legislators' requests on hiring and promotion with the expectation and understanding that the legislature would provide generous funding to the Department.

377. Evidence that this relationship began early in O'Brien's tenure includes a series of recorded voicemails left by Janet Mucci at the home of Edward Dalton in October 2000. In the voicemails, Mucci can be heard relating to Dalton that Commissioner O'Brien needs certain candidates to make it through the interview process because the legislature had acted favorably on Probation's budget, and Probation needed to return the favor:

²⁹⁶ Representative Thomas Petrolati is not among the ten legislators most frequently listed on the Sponsor Lists, but former Deputy Commissioner Burke testified that he sometimes would receive calls with the names of favored candidates for positions in western Massachusetts from Petrolati directly, and would act on them without always going through the Commissioner.

²⁹⁷ Testimony of Edward Ryan, June 29, 2010 (Exhibit 131), at 73-77, 154.

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I know you are not doing interviews today but in Dedham there are people that have to be finalists ... Jack [O'Brien] had given me, one, two, three, four, like 7 names to be interviewed

* * *

I've got some names for finalists in the Dedham District Court ... can you just make sure they're in there somewhere ... so now that I just beefed you up a little bit, you gotta do this... there's one, two, three, four, five, there's 6 people to be finalists in Falmouth... ***he had a meeting at the State House yesterday and he has no choice.***

* * *

Falmouth's going to be tough because there is about, I think there's 5 or 6 finalists and that out of eight is crazy. But Jack had had a meeting over at the State House yesterday... and again that triggered a lot of this. ***You know [whispering] when he got everything he wanted this year in the budget moneywise, so they feel like they did that for him ...and obviously he needs to do this for them.***

A copy of the transcript of these voicemail recordings accompany this Report as Exhibit 31.

378. Mucci confirmed that her information came directly from O'Brien:

Q. So you're saying to Mr. Dalton here that because Mr. O'Brien got what he wanted in the budget that he therefore has to be sure these candidates make the final list, correct?

A. Yeah. That's definitely what I'm saying.

Q. And you're not saying that because you made it up, are you?

A. No. Because I would have no reason to – I wouldn't know anything about anything going on at the State House if he didn't tell me it. I can't imagine why he would share that with me.

Q. Does it follow that you got this information directly from Mr. O'Brien?

A. It had to be, yeah. Because I don't know who else he would even go with.

Testimony of Janet Mucci, October 5, 2010 (Exhibit 121), at 180.

379. Ellen Slaney testified that Commissioner O'Brien explained the connection between hiring and the Department's budget to her:

- Q. What was said next in this conversation, as best you can recall?
- A. Well, you know, I also indicated to him that I understood that this was just my perception and that he had other things to consider. He said he did, that the budget was important and that these appointments were important to his being able to accomplish the budget that he needed in order to do our business.

Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 19.

380. Years later, when Slaney was discussing the Lucy Ligotti hiring with Deputy Commissioner Tavares and urging that another, more qualified candidate be selected, Tavares cautioned her that "sometimes the political thing needs to be done first," which Slaney understood to be a reference to keeping the legislature mollified for budget purposes.²⁹⁸

381. Deputy Commissioner Burke portrayed himself as extremely close to powerful legislators, particularly Representative Petrolati. Burke volunteered the link between funding and accommodating legislators:

- Q. Isn't it a fact that Speaker Petrolati is a particularly important figure to those who would like to get promoted within the Probation Department because he is a powerful political figure and he's known to have influence in hiring?
- A. He's a good figure because he supports Probation. I mean, if Jack O'Brien was there right now, we would not have layoffs. He would have got the money, and there would be no layoffs. You would have had furloughs, but you would have had no layoffs. I swear, he would have got that money somehow.

²⁹⁸ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 88-89.

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- Q. And what you mean by that is that Jack O'Brien had a sufficiently strong relationship with Representative Petrolati and others –
- A. All others, yeah.
- Q. – that he would have seen to it that there was an appropriation sufficient so that there wouldn't be layoffs?
- A. Correct.
- Q. In your mind, there's a direct link between the relationship that the Commissioner's office has with legislative leaders and appropriations sufficient to support hiring and growth within Probation, is that correct?
- A. Correct.

Testimony of William Burke, July 22, 2010 (Exhibit 96), at 67-68.

382. Burke reiterated this view later in his testimony in unequivocal terms:

- Q. You understood, didn't you, that while it wasn't written down, the legislature was funding Probation generously because Probation was responding to legislative requests for hiring, among other things, isn't that right?
- A. I'd say yeah.
- Q. So you understood that one of the reasons Probation under the auspices of Jack O'Brien could get the funding it needed was that Jack O'Brien was being responsive to the hiring requests of legislative leaders?
- A. And judges.
- Q. But certainly legislative leaders, correct?
- A. Yes.

* * *

- Q. The way in which it worked was one hand, you know, washed the other?
- A. Washes the other. Yeah, I know. I know what you're talking about.

Q. And the way it worked particularly with Probation was Mr. O'Brien would get his funding, and the legislature would get some jobs, isn't that right?

A. Yeah, I would say so, yeah.

Testimony of William Burke, July 22, 2010 (Exhibit 96), at 79, 82-83.

383. Other witnesses stated that this belief – that hiring and promotions were a way of ensuring generous appropriations for Probation – was widely held throughout the Department. For example, Regional Supervisor Rios told us that she heard “through the rumor mill” at work that if Probation did not accommodate the legislature with respect to hiring and promotions, the Department’s budget would be at risk and other legislation important to the department might not be passed.²⁹⁹

384. Whether probation’s budget was increased in return for favorable employment action for sponsored candidates remains uncertain but probable. Despite convincing evidence, during the period 2005-2009, Probation’s budget increased more rapidly than the state budget as a whole, but not at a measurably greater rate than the Trial Court as a whole. *See supra* ¶¶ 54-55. On the other hand, the legislature increased Probation’s appropriation by an aggregate \$25 million more than the Trial Court requested in that period. *See supra* ¶ 56. That fact, and testimony concerning O’Brien’s motivation in rigging the hiring process in favor of legislatively connected candidates, strongly suggests at least an implicit arrangement between O’Brien and legislative leadership.

E. Success of Sponsored Candidates

385. Not every sponsored candidate was successful in obtaining employment or promotion. As seen in some of the testimony from the regional supervisors, the Commissioner

²⁹⁹ Testimony of Nilda Rios, August 4, 2010 (Exhibit 130), at 105-106.

frequently submitted multiple names to the local panels for a single position. In such instances, some sponsored candidates were disappointed, although, because candidates often applied for multiple positions, it was possible they could obtain a position in a different court.

386. Nonetheless, the anecdotal evidence suggests that positions typically went to sponsored candidates, rather than a candidate whose name was not given to the interviewers.

387. Moreover, statistically the top sponsors were successful in obtaining employment and promotions for their candidates, particularly given the hundreds or even thousands of applicants for positions within the Department.

388. For example, Speaker of the House Salvatore DiMasi is shown by the Sponsor Lists as having sponsored a total of 36 candidates for hiring and promotion. Of these, 24, or 66.7%, were successful in being hired or promoted within a year of being sponsored.

389. Senator Travaglini appears as the sponsor for 28 candidates on the Sponsor Lists. Of these, 16 candidates were hired or received promotions, for a success rate of 57.1%.

390. Speaker DeLeo appears as the sponsor for 12 candidates. Of these, 7 – 58.3% – were successful in being hired or promoted.

391. The following table reflects the success rate for the top 10 sponsors, plus Speaker DeLeo and Representative Petrolati, in having sponsored candidates hired or promoted within one year of the sponsorship. Overall, the candidates sponsored by these legislators had a 36.4% success rate in hiring and promotion in a defined period, a rate that is far in excess of that for non-sponsored candidates:

TABLE 1

Sponsor	No. of Candidates Sponsored	No. of Sponsored Candidates Who Were Hired or Promoted Subsequent to Their Being Sponsored	Success rate
Montigny	54	12	0.222
Brewer	44	11	0.250
DiMasi	36	24	0.667
Travaglini	28	16	0.571
Pacheco	24	6	0.250
Creedon	22	6	0.273
Hart	21	9	0.429
McGee	21	11	0.524
Tobin	20	2	0.100
Panagiotakis	20	5	0.250
Petrolati	17	7	0.412
DeLeo	12	7	0.583
Total	319	116	0.364

F. Assurances Given to Politicians Concerning Candidates

392. The promotion of Joseph Dooley to first assistant chief probation officer in the Bristol Superior Court in 2005, is one of the more troubling examples of patronage and demonstrates the extent to which O'Brien was willing to corrupt the system even if the Probation Department might be harmed.

393. Ellen Slaney testified (and her contemporaneous notes reflect) that prior to the local round of interviews for the first assistant chief probation officer position, Joseph Dooley (at the time a probation officer in charge) told her that he had discussed the position with Senator Marc Pacheco, a friend of his.³⁰⁰ According to Dooley, Pacheco had, in turn, discussed the position with Commissioner O'Brien. O'Brien reportedly assured Pacheco that either Dooley

³⁰⁰ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 115.

would be selected for the first assistant chief probation officer position, or the position would remain vacant:

- A. Well, Joe Dooley had indicated to me that he got a call from Senator Pacheco, who told him that he had had a conversation with the Commissioner and that if Joe was not the final candidate there would be no appointment.
- Q. So Joe Dooley told you that he had heard from Senator Pacheco that Senator Pacheco had a conversation with the Commissioner, and the Commissioner in some way assured Senator Pacheco that unless Joe Dooley was made the First Assistant then the court would just go without a First Assistant?
- A. Right.

Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 115. Slaney had the sense that Dooley told her this because he was nervous about his chances of receiving the promotion.³⁰¹

394. Dooley claimed not to remember describing this conversation with Senator Pacheco to Slaney. He did confirm, however, that his conversation with Pacheco took place:

- Q. In 2005, when you were applying for the first assistant chief position, did Senator Pacheco relay to you that the commissioner had told him that if you didn't get the position then the commissioner would just freeze the position and wouldn't fill it?
- A. I believe he did.
- Q. As best you can recall, what exactly did Senator Pacheco tell you?
- A. He supported me for the first assistant chief's job and that if I did not receive the position, the commissioner would freeze the position.

Testimony of Joseph Dooley, September 17, 2010 (Exhibit 106), at 37-38.

³⁰¹ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 115.

395. According to Dooley, he was “surprised” by what Senator Pacheco told him.³⁰²

Beyond his surprise, Dooley appeared to have greeted Pacheco’s message as “business as usual” in Probation:

Q. Do you think it was appropriate for the Commissioner to say, I’m going to freeze this position if one particular candidate’s not the one selected?

A. Do I think it was appropriate?

Q. Right.

A. I don’t know. I don’t know.

Q. Would you have wanted the position to actually be frozen if you weren’t the one selected?

A. I don’t know. That’s in 2005. I don’t remember what my emotions were then. I remember being happy in the job that I had. I don’t recall. I don’t remember. I don’t mean to be vague but –

Testimony of Joseph Dooley, September 17, 2010 (Exhibit 106), at 40-41.

396. Dooley was appointed as first assistant chief probation officer.³⁰³ Accordingly, there was no occasion for O’Brien to leave the position vacant.

397. Senator Pacheco testified that O’Brien never made the statement attributed to him, nor did he ever repeat that statement to Dooley. It is Independent Counsel’s conclusion that the testimony of Dooley and Slaney regarding what Pacheco said is truthful.

398. Slaney was at first unclear whether Dooley’s name was provided to the local interview panel as a favored candidate. She testified that she was not provided Dooley’s name in advance of the interviews.³⁰⁴ However, her contemporaneous notes reflected, and she

³⁰² Testimony of Joseph Dooley, September 17, 2010 (Exhibit 106), at 38.

³⁰³ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 197.

³⁰⁴ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 123.

subsequently testified, that in advance of the interviews Tavares did inform her that “the Commissioner was interested in seeing Joe Dooley for First Assistant . . .” Slaney then shared this information with the chief probation officer sitting on the interview panel.³⁰⁵

399. The provision of Dooley’s name to the local interview panel may not have mattered. Slaney testified that she ranked Dooley second among the applicants appearing before the local panel, and would have done so even if she had not known he was a preferred candidate because she had a favorable opinion of his work as a probation officer in charge.³⁰⁶ The judge on the panel ranked him fifth. Thus, it is likely that Dooley would have made it through the local panel interview in any event.

400. At the final interview stage, the selection of Dooley was preordained as part of the O’Brien promotion process. Regional Supervisor Edward Rideout, who sat on the final panel interviewing for the first assistant chief probation officer position, testified that while he favored a different candidate whom he believed to be more qualified than Dooley, Deputy Commissioner Wall told him that “it was not time” for that candidate to be promoted.³⁰⁷

G. Hiring of Robert Ryan as a Chief Probation Officer

401. The *Boston Globe* Spotlight story reported that Robert Ryan received his position as chief probation officer in Eastern Hampshire District Court because his wife worked as an aide to Representative Petrolati. Independent Counsel concludes that the evidence does not support a conclusion that Petrolati was a determinative factor in Ryan’s hiring.

402. The *Globe* reported that Acting Chief Probation officer, David Roy, “lost his job” as acting chief in 2005 “in favor of the husband of Petrolati’s legislative aide, Colleen Ryan.”

³⁰⁵ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 132.

³⁰⁶ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 116-17.

³⁰⁷ Testimony of Edward Rideout, August 27, 2010 (Exhibit 129), at 67, 79-82.

The article reported that Ryan had recently retired from a career in the federal probation service and wanted to work for the state. According to the *Globe*, Roy declined to apply for the Assistant Chief Probation Officer position and went back to being a line probation officer.

403. Ryan worked in the Federal Probation Service for twenty-five years and reached the mandatory retirement age in that agency of fifty-seven at the end of 2004.³⁰⁸ Ryan stated that because he knew he was going to be forced to retire from the Federal system and he wanted to keep working, he asked Deputy Commissioner William Burke to let him know if there were job openings in the Probation Department in western Massachusetts. Ryan knew Burke, having worked as a probation officer in the Holyoke District Court prior to joining the Federal Probation Service.³⁰⁹

404. Ryan testified that he first saw the posting for the chief's position on a website and that Burke may have pointed it out to him.³¹⁰ He submitted his application and was interviewed by Burke and Francine Ryan, whom Ryan also knew from his days in Holyoke District Court.³¹¹ Ryan testified that he may have known in advance that Burke and Francine Ryan were going to interview him and that at some point Burke told him that he thought Ryan had a good chance of getting the job based on his qualifications.³¹²

³⁰⁸ Testimony of Robert Ryan, October 22, 2010 (Exhibit 133), at 9-12. Relevant excerpts of the testimony of Chief Probation Officer Ryan accompany this Report as Exhibit 133.

³⁰⁹ Testimony of Robert Ryan, October 22, 2010 (Exhibit 133), at 24-25.

³¹⁰ Testimony of Robert Ryan, October 22, 2010 (Exhibit 133), at 26.

³¹¹ Testimony of Robert Ryan, October 22, 2010 (Exhibit 133), at 20-21.

³¹² Testimony of Robert Ryan, October 22, 2010 (Exhibit 133), at 29-31.

405. Ryan confirmed that his wife has worked for Representative Petrolati for the past seven years and that he knows Petrolati “very well.”³¹³ Ryan told us that he listed Petrolati as one of his references on his application for the chief probation officer position:

One of the things I wanted to expand on or make some clarification on was in reference to Tom Petrolati as a reference. It is true that I put him down because I felt that he knew me from a different perspective than the judges but I’m not naive enough to think that having a -- I don’t know what his position was exactly at that time -- but having a state representative supporting a position for a state job would not be beneficial to me so I’m not saying that I viewed him as somebody who would be the guy next-door to me where there would be no recognition of who he is and what his position is. So I wanted to clarify that.

Testimony of Robert Ryan, October 22, 2010 (Exhibit 133), at 39.

406. While Ryan did not have a clear recollection of discussing his application with Petrolati, he testified that he “would expect” that he “had some communication with him...or did notify him that I was applying and that he was a reference.”³¹⁴ Ryan also stated that he was aware through Petrolati that Petrolati had a relationship with Commissioner O’Brien.³¹⁵

407. Ryan testified that he did not ask Petrolati or anyone in Petrolati’s office to contact Probation on his behalf and to his knowledge, his wife did not speak with Petrolati regarding his application.³¹⁶ Ryan further testified that he does not know whether Petrolati contacted anyone within Probation on his behalf, but he “would not be surprised if he did something relative to [his] application.”³¹⁷

³¹³ Testimony of Robert Ryan, October 22, 2010 (Exhibit 133), at 33, 35.

³¹⁴ Testimony of Robert Ryan, October 22, 2010 (Exhibit 133), at 40.

³¹⁵ Testimony of Robert Ryan, October 22, 2010 (Exhibit 133), at 42.

³¹⁶ Testimony of Robert Ryan, October 22, 2010 (Exhibit 133), at 36, 38.

³¹⁷ Testimony of Robert Ryan, October 22, 2010 (Exhibit 133), at 39-40, 51-52.

408. The Sponsor Lists identify “Robert Ryan” as a sponsored candidate, but show Representative John Rogers as his sponsor, not Representative Petrolati. It should be noted that Deputy Commissioner William Burke testified that he would often act directly on recommendations from politicians in the western part of Massachusetts. Burke, however, testified that to his knowledge the Commissioner’s Office did not receive a recommendation for Ryan from Petrolati.³¹⁸

409. Francine Ryan testified that she did receive Robert Ryan’s name as a candidate to advance to the next round of interviewing from Deputy Commissioner Elizabeth Tavares.³¹⁹ Francine Ryan testified that she believed that Ryan was “absolutely” the most qualified candidate for the job.³²⁰

410. The evidence is that Ryan was well connected to individuals with influence within the Probation Department, including Petrolati and Burke, and that his name was given to the local interview panel. Accordingly, it is likely that Ryan’s connections did play a role in his hiring.

411. Ryan, however, was extremely well qualified for the position. He began his career in the Holyoke District Court Probation Department. At the time he was a Vietnam veteran and entered the Probation Department through a federal program. He started out as a probation officer and then was appointed Assistant Chief Probation Officer. When Ryan left in 1980, he was Acting Chief in that Court. Ryan then spent the next twenty-five years of his career in the Federal Probation Service and ultimately held the position of Chief, U.S. Probation

³¹⁸ Testimony of William Burke, October 22, 2010 (Exhibit 96), at 143-144.

³¹⁹ Testimony of Francine Ryan, October 22, 2010 (Exhibit 132), at 121-124.

³²⁰ Testimony of Francine Ryan, October 22, 2010 (Exhibit 132), at 121-124.

Office for the District of Massachusetts.³²¹ In that position he oversaw 80 employees and three courthouses.³²² There is no reason to believe that Ryan would not have been offered his position without Petrolati and/or Burke's support.

V. ALLEGATIONS OF "PAY FOR PLAY"

412. One of the principal allegations in the *Boston Globe* story is that many individuals hired into the Probation Department, or seeking promotion within the Probation Department, made suspiciously timed contributions to state legislators. The implication is that these individuals effectively purchased the crucial support of legislators in order to be hired or promoted.

413. Independent Counsel sought evidence supporting or refuting these "pay for play" allegations. No witness interviewed provided any direct evidence that politicians were explicitly exchanging sponsorship for campaign contributions. There is statistical evidence, however, demonstrating that a significant percentage of the candidates sponsored by certain high-ranking politicians have been contributors to those politicians, and stronger statistical evidence that sponsored candidates who contribute are more likely to be hired or promoted within the Department than sponsored candidates who do not contribute.

414. Independent Counsel interviewed two individuals who were identified by the *Boston Globe* as potential participants in "pay for play" schemes. As discussed herein, Independent Counsel concludes that in neither case did "pay for play" actually occur.

A. Statistical Evidence of Pay for Play

415. While no witness testified that any formal pay for play scheme existed, there is statistical evidence suggesting the possibility of such an understanding.

³²¹ Testimony of Robert Ryan, October 22, 2010 (Exhibit 133), at 9-10, 22.

416. A list of the top 20 legislative recipients of contributions from Probation Department employees appears as Appendix 8 to this Report.

417. Independent Counsel did not elicit direct evidence that legislators offered to sponsor candidates in exchange for campaign contributions, but there is considerable overlap between individuals sponsored and contributors, as shown in the following table:

TABLE 2

Sponsor	No. of Candidates Sponsored	No. of Sponsored Candidates Who Made Contributions	Percent Contributors
Montigny	54	23	0.426
Brewer	44	6	0.136
DiMasi	36	12	0.333
Travaglini	28	10	0.357
Pacheco	24	6	0.250
Creedon	22	3	0.136
Hart	21	9	0.429
McGee	21	6	0.286
Tobin	20	1	0.050
Panagiotakis	20	3	0.150
Petrolati	17	13	0.765
DeLeo	12	6	0.500
TOTAL	319	98	0.307

418. Of the 54 candidates sponsored by Senator Montigny, for example, it appears that at least 23, or 42.6% , were or are contributors to the Senator. Of the 21 candidates sponsored by Senator Hart, 9, or 42.9%, were or are contributors. Of the 17 individuals for whom Representative Petrolati was listed as a sponsor, 13, or 76.5%, were contributors. At the other end of the spectrum, only 6 of the 44 candidates sponsored by Senator Brewer, only 3 of the 22 sponsored by Senator Creedon, only 1 of the 20 sponsored by Representative Tobin have been contributors.

³²² Testimony of Robert Ryan, October 22, 2010 (Exhibit 133), at 53-54, 66-70.

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419. In addition, six of the top ten legislators in terms of sponsoring candidates – DiMasi, Travaglini, Montigny, Hart, Pacheco, and Brewer – along with Speaker DeLeo are among the twenty most-frequent recipients of contributions from Probation Department employees since 2000. With the exception of the two Speakers, consistently almost half or more of the Probation Department contributors to these legislators were sponsored by the legislators for hiring or promotion within the Department. This high percentage suggests that for many a desire for sponsorship, or the past receipt of sponsorship, was the motivation behind the contribution:

TABLE 3

Sponsor	No. of Contributors	No. of Contributors Who Were Sponsored	Percentage Sponsored
Montigny	46	23	.500
DiMasi	34	12	.353
Travaglini	21	10	.476
Hart	19	9	.474
DeLeo	18	6	.333
Pacheco	13	6	.462
Brewer	9	6	.667
TOTAL	160	72	.450

420. Perhaps more relevant than statistics of the percentage of sponsored candidates who were contributors and the percentage of sponsored candidates who were not contributors, however, is the greater success that contributors have had in being hired or promoted than non-contributors. Given the manner in which some legislators prioritized their sponsored candidates for Commissioner O'Brien, the discrepancy in success rates between contributors and non-contributors to these politicians is troubling.

421. For example, of the 10 contributors to Senator Travaglini whom he sponsored, all but one were successfully hired or promoted – a 90% success rate. On the other hand, of the 18

candidates sponsored by Senator Travaglini who never contributed, only 7 were hired or promoted within the Department – a still impressive rate of 38.9%, but less than half the success rate of contributors.

422. Senator Montigny provides another compelling example. Of the 54 candidates sponsored by Senator Montigny, 12 were hired into or promoted within the Probation Department. Of these, 11 of them – 91.5% – have been contributors to Montigny. In other words, only one of the candidates sponsored by Montigny who was hired was not a contributor.

423. In addition, only 12 of the contributors that Montigny sponsored were not hired or promoted. Sponsored candidates who have contributed to Montigny thus had a 47.8% success rate (11/23). The 31 sponsored candidates who have not been contributors to Montigny, on the other hand, had a success rate of only 3.2% (1/31).

424. Significant discrepancies in favor of contributors appear as well for Senator Brewer, Senator Pacheco, Senator Creedon, Senator Hart, and Senator Panagiotakis. But no significant difference exists for contributors of former Speaker DiMasi, Senator McGee, or Representative Hart.

425. As a group, the legislators successfully sponsored 62.2% of the contributors, but only 25% of the non-contributors. The sponsored contributors, in other words, were almost two and a half times more likely to be successful in being hired or promoted than the sponsored non-contributors. Setting aside former Speaker DiMasi who was successful in placing a large number of non-contributors, the respective percentages are 62.8% and 19.4% – the contributors are more than three times as likely to be successful.

426. The following table sets forth this information for all of the legislators in the top 10 sponsors list:

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TABLE 4

Sponsor	Sponsored Contributors	Successful Contributors	Sponsored Non-Contributors	Successful Non-Contributors	Success Rate Contributors	Success Rate Non-Contributors
Montigny	23	11	31	1	0.478	0.032
Brewer	6	5	38	6	0.833	0.158
DiMasi	12	7	24	17	0.583	0.708
Travaglini	10	9	18	7	0.900	0.389
Pacheco	6	4	18	2	0.667	0.111
Creedon	3	3	19	3	1.000	0.158
Hart	9	6	12	3	0.667	0.250
McGee	6	3	15	8	0.500	0.533
Tobin	1	0	19	2	0.000	0.105
Panagiotakis	3	3	16	2	1.000	0.125
Petrolati	13	6	4	1	0.462	0.250
DeLeo	6	4	6	3	0.667	0.500
Total	98	61	220	55	0.622	0.250

427. With respect to the successful contributors, contributions were not always proximate to sponsorship. For some individuals contributions were far in advance, and for others years later. However, in the great majority of cases, some or all of the contributions were made in relatively close proximity to the sponsorship.

B. Anecdotal Evidence of Pay for Play

428. With few exceptions – Joe Dooley and Robert Ryan, mentioned above, and some further individuals discussed herein – Independent Counsel did not undertake to systematically interview the sponsored candidates. That may be an avenue for future exploration by appropriate agencies.

429. Independent Counsel did receive compelling testimony from one Department employee, Bernard Dow, tending to confirm the statistical evidence that legislators push harder for their contributors than their non-contributors, and certainly confirming that Department employees believe they will.

430. According to Dow, between 1976 and 2005 he applied for a promotion approximately six times, including to the positions of assistant chief probation officer, chief probation officer, and regional supervisor. He was denied each time.³²³

431. In late 2004, Dow learned that two positions were available within Worcester District Court – first assistant chief probation officer and assistant chief probation officer. Upon the posting of the jobs, Dow went to Chief Probation Officer William Mattei to let him know that he would be applying for the positions. Dow testified that he got the sense that Mattei was not going to support him for either position.

432. Dow went home and talked with his wife and decided that he was tired of getting passed over.³²⁴ He believed that even though he was more than qualified in terms of education and experience than other potential applicants for the promotions, having such qualifications would not have been enough. Dow stated “I knew that I was not going to get that job on my qualifications alone. I knew I was not going to get it. So I knew or believed that I needed some political help to get it.”³²⁵

433. Accordingly, Dow decided to obtain sponsorship from Speaker DiMasi, despite not being a constituent of the speaker:

Q. So you’re having this conversation with your wife. What were your next steps when you determined that you needed some political backing?

A. I don’t remember specifically.

Q. Yes.

³²³ Testimony of Bernard Dow, October 21, 2010 (Exhibit 108), at 63-64. Relevant excerpts of the testimony of Assistant Chief Probation Officer Dow accompany this Report as Exhibit 108.

³²⁴ Testimony of Bernard Dow, October 21, 2010 (Exhibit 108), at 61-63.

³²⁵ Testimony of Bernard Dow, October 21, 2010 (Exhibit 108), at 63.

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A. But I knew I better go ahold [sic] of somebody and certainly one if you will, the politician that was the most powerful certainly in the state was Mr. DiMasi.

Q. Due to his role as Speaker of the House?

A. Absolutely.

* * *

Q. So after doing it on your own over and over again for the chief probation officer jobs, ACPO jobs, regional administrator jobs, in 2004 and 2005, that's when you decide to go to DiMasi and ask for help?

A. I woke up. I woke up. That's right.

Testimony of Bernard Dow, October 21, 2010 (Exhibit 108), at 64, 142.

434. Dow called Speaker DiMasi's office and spoke with DiMasi's Chief of Staff, Danny Toscano, prior to taking part in a first round interview for a first assistant chief probation officer position and an assistant chief probation officer position.³²⁶ Toscano, who Dow was familiar with from Probation Department work, responded by telling Dow "we'll let you know" and "we'll work on it."³²⁷

435. Though Dow stated that neither DiMasi, Toscano, nor anyone else from DiMasi's office ever solicited funds, he began contributing to DiMasi in the belief that this would assist in securing DiMasi's assistance in his promotion.³²⁸ On September 26, 2004, Dow made a \$500 donation to the Committee to Elect Sal DiMasi, his first donation to Speaker DiMasi ever. Just five months later, on February 4, 2005, Dow again donated \$500 to Speaker DiMasi – this while Dow was in the middle of interviewing for the positions.³²⁹

³²⁶ Testimony of Bernard Dow, October 21, 2010 (Exhibit 108), at 64-65.

³²⁷ Testimony of Bernard Dow, October 21, 2010 (Exhibit 108), at 66.

³²⁸ Testimony of Bernard Dow, October 21, 2010 (Exhibit 108), at 54-55, 60, 74-77, 89-92, 104-105, 142.

³²⁹ Testimony of Bernard Dow, October 21, 2010 (Exhibit 108), at 54-55.

436. After their initial call, Dow and Toscano spoke on several more occasions.³³⁰

Toscano eventually informed Dow that he was “not going to get the first assistant chief probation officer’s job because it’s already spoken for, but you’re going to get the assistant chief probation officer’s job.”³³¹ Dow testified that Toscano gave him this news over the phone, the night before his final round interview. The next morning Dow drove to Boston for his final round interview but first stopped at the State House to meet with Toscano.

Q. This was the same day that was going to be your second round interview for the assistant chief probation officer’s job?

A. That’s right. I met him just before. I left the State House and walked over to One Ashburton Place which is right next door basically.

Q. It was at this time that Mr. Toscano first told you that the assistant chief probation officer job was going to be yours?

A. No. I think that he told me the night before I met him and I went back. I went there and he says, “did you listen to what I said to you last night?” I said, “well, I thought you were only kidding.” I think that was my words. He says, “I’m not kidding.” He says “congratulations.” He congratulated me.

Q. Mr. Toscano congratulated you on getting the assistant chief probation officer position prior to your going into your second round interview?

A. Yes, sir, and the reason I remember it, but [sic] when I went in there, I had a whole different demeanor about me.

Q. When you say you went there, you mean when you went into your second round interviews?

³³⁰ Testimony of Bernard Dow, October 21, 2010 (Exhibit 108), at 66-67.

³³¹ Testimony of Bernard Dow, October 21, 2010 (Exhibit 108), at 69. Toscano did not inform Dow who was going to get the first assistant chief probation officer position. *Id.* Maureen Chamberlain, a probation officer with approximately eight years experience, was selected over numerous current assistant chief probation officers with decades of experience. *Id.* at 85-88. Chamberlain is the daughter of deceased Massachusetts Supreme Court Justice Frank O’Conner, the wife of a Trial Court employee who works in data processing, and the sister of Eileen O’Connor who works for the Judicial Institute. *Id.* at 85-86.

A. Yes, sir, yeah.

Testimony of Bernard Dow, October 21, 2010 (Exhibit 108), at 72-73.

437. Even after receiving his promotion, Dow continued to donate money to DiMasi or one of his committees. All told, Dow contributed more than \$1600 to DiMasi or one of his committees from September 2004 through December 2005, which is more than half of the \$3060 Dow contributed to all politicians in a nine year span.³³²

438. Despite contributing to DiMasi with the explicit hope that this would help him secure a promotion, Dow told us that he was “appalled” at the fact that he felt he needed to do so:

Q. But you know that you got your job through assistance with Mr. Toscano and Mr. DiMasi, because they told you ahead of time?

A. Absolutely. Let me also put it this way, if I may.

Q. Uh-huh.

A. I don't like contributing, okay, large sums of money to anybody other than to my family, my children. Okay? My grandchildren. I don't like doing that. \$500.00 to me on two occasions and a total of over \$3000.00 of this after taxes that is, not -- Remember, I can't claim these. Okay? I don't like doing that. I don't mind 25 here and something you get a breakfast or something, you know, take off to, what would a breakfast cost me, five bucks? So really I only contributed \$20.00, but \$500.00 and \$500.00 again and the Committee for a Democratic House which was sponsored by, I think that was a Sal DiMasi, he set that up, I believe. Okay? I don't like doing that.

* * *

[I] don't find fault with Bernie Dow, that he gave a thousand dollars or whatever he gave to Sal DiMasi. Bernie Dow was more than qualified for that job. Okay? Service-wise, educational-wise, all right? And everybody

³³² Testimony of Bernard Dow, October 21, 2010 (Exhibit 108), at 90-91.

thought that it was appalling if anybody knew that I would have had to give money, that money would have possibly played a part in me getting a job. I think it is appalling. I think that sucks. Okay? Here I go. I'm going off on a tangent again.

Q. No, I understand.

A. All right? I've got better things to do with \$500.00, a thousand, \$3000.00. Okay?

Testimony of Bernard Dow, October 21, 2010 (Exhibit 108), at 89-90, 104-105.

C. Allegations of Pay for Play in the *Globe* Spotlight Story

439. Although there appears to be statistical support for the notion of “pay for play” involving certain legislators and some anecdotal evidence, Independent Counsel concludes that the specific examples of potential “pay for play” that were mentioned in the *Boston Globe* story are not substantiated.

1. The Promotion of Mark Prisco to Chief Probation Officer

440. The *Boston Globe* Spotlight story singled out the promotion of Mark Prisco, the then acting chief probation officer of the West Roxbury branch of the Boston Municipal Court, to chief probation office as an example of a politically-connected candidate receiving preferential treatment over a purportedly more qualified candidate.

441. The *Globe* story noted that Prisco has donated more than \$10,000 to politicians in the Commonwealth, including more than \$2,000 to Treasurer Cahill, suggesting that these donations were responsible for his being promoted.

442. Publically available records show that Prisco has in fact donated substantial sums – more than \$10,000 – to a wide range of politicians (state legislators, as well as District Attorney candidates and a city councilor) over the past decade.

443. Independent Counsel reviewed with Prisco each of the politicians to whom he has donated. Prisco represented that he knows most of these politicians because they are relatives, friends or acquaintances from his undergraduate school, “friends of friends,” or individuals that he met through the course of his employment in the Department with whom he was impressed.³³³ The only person not falling into that category was Representative Robert DeLeo, to whom Prisco made one donation.³³⁴

444. Prisco testified that he never asked any of these politicians to make a call to the Commissioner’s office nor to write a letter on his behalf. He further testified that he was not aware of any of these politicians in fact making such a call or sending such a letter.³³⁵

445. Records obtained demonstrate that in fact some politicians did make calls on behalf of Prisco, though it is possible they did so without his knowledge.

446. In particular, when Prisco was applying to become chief probation officer in 2006, calls were made on his behalf by Rep. John Rogers (whom he knows from Norfolk) and Rep. Angelo Scaccia, who is his cousin. These calls were logged on the Sponsor List maintained by the Commissioner’s office.

447. There is no evidence, however, that these calls on Prisco’s behalf had any impact on his candidacy for the chief probation officer position. Most importantly, there is no evidence his name was given to interviewers as a preferred candidate. Former First Deputy Commissioner Cremens recalled being provided the name of James Rush, Prisco’s predecessor, as a preferred candidate for the West Roxbury position during final round interviews, but did not recall

³³³ Testimony of Mark Prisco, September 24, 2010 (Exhibit 127), at 36-41. Relevant excerpts of the testimony of Chief Probation Officer Prisco accompany this Report as Exhibit 127.

³³⁴ Testimony of Mark Prisco, September 24, 2010 (Exhibit 127), at 41.

³³⁵ Testimony of Mark Prisco, September 24, 2010 (Exhibit 127), at 48, 53.

receiving Prisco's name as a preferred candidate.³³⁶ Likewise, Regional Supervisor McHale testified that he did not receive Prisco's name as a preferred candidate at the local round of interviews.³³⁷

448. While the *Globe* Spotlight story focused on the credentials of the other applicant for the position, Prisco also had significant credentials. He was, at the time of his candidacy for chief probation officer, the acting chief probation officer, and had previously been first assistant chief probation officer and assistant chief probation officer for that court. He is a graduate of Boston College and has a masters degree. He provided numerous letters of commendation and recommendation from community leaders obtained throughout his tenure in Probation attesting to his hard work and dedication to the Department and its goals.

449. On balance, based on the testimony by Cremens and McHale that Prisco was not identified to them as a favored candidate, Independent Counsel does not believe the calls placed on Prisco's behalf played any meaningful role in his promotion. Based on the available evidence, it is unclear that his contributions to politicians were motivated by the promotion process, or were the catalyst for calls made on his behalf by the two legislators.

2. *The Hiring of Arthur Sousa as a Probation Officer*

450. The *Boston Globe* Spotlight story also highlighted Arthur Sousa, a probation officer in Somerville District Court, as an example of its "pay to play allegations." Independent Counsel concludes that the evidence does not support a conclusion that Sousa, in effect, purchased a recommendation from DeLeo.

451. The *Globe* story reported that Sousa began donating to Representative DeLeo in April 2006, despite the fact that he did not live in DeLeo's district. According to the *Globe*,

³³⁶ Testimony of John Cremens, August 6, 2010 (Exhibit 102), at 54-56.

since that time he has donated \$1,700 to DeLeo and received a promotion from associate probation officer to probation officer and his pay has increased by almost \$15,000 a year to \$55,348. The article reported that Sousa claimed to be a long-time supporter of DeLeo but had not made any donations in the four years prior to 2006.

452. Publically-available records show that Sousa has donated \$1,750 to DeLeo after first giving to his campaign in April 2006. Sousa has not donated to any other politician in that time.

453. Sousa testified that he first gave to DeLeo in 2006 when he attended a fundraiser with his cousin.³³⁸ Sousa stated that his cousin lives in DeLeo's district (Revere), was doing work for DeLeo's campaign, and asked Sousa and his wife to attend.³³⁹ He testified that each of the donations he made were to attend fundraisers (although in two instances they did not end up attending the events).³⁴⁰

454. Sousa testified that he had applied for a probation officer position in Brighton District Court in 2006. At that time, he called Representative DeLeo's office to request a recommendation.³⁴¹ Although Sousa was vague about why he sought a recommendation from DeLeo, merely stating he thought it could be "helpful," he testified that he spoke with a secretary in his office and informed her that he was seeking a reference or a recommendation.³⁴²

³³⁷ Testimony of Mark McHale, July 30, 2010 (Exhibit 117), at 104.

³³⁸ Testimony of Arthur Sousa, October 7, 2010 (Exhibit 136), at 33-34. Relevant excerpts of the testimony of Probation Officer Sousa accompany this Report as Exhibit 136.

³³⁹ Testimony of Arthur Sousa, October 7, 2010 (Exhibit 136), at 34-35.

³⁴⁰ Testimony of Arthur Sousa, October 7, 2010 (Exhibit 136), at 65-66.

³⁴¹ Testimony of Arthur Sousa, October 7, 2010 (Exhibit 136), at 37-38.

³⁴² Testimony of Arthur Sousa, October 7, 2010 (Exhibit 136), at 37-38.

455. Sousa stated he did not receive any response to his call to DeLeo and has no knowledge whether any recommendation was given on his behalf.³⁴³

456. Leonard Mirasolo, who is Director of Constituent Service for DeLeo, recalled Sousa. Mirasolo met Sousa at one of the fundraisers Sousa described and subsequently received a call from Sousa asking for a letter of recommendation. Mirasolo told us that Sousa stood out as a candidate because of his many years of service and ability to speak Spanish and Portuguese.³⁴⁴ Mirasolo did not provide the requested letter, but did make one call to Commissioner O'Brien to offer a recommendation for Sousa on DeLeo's behalf.³⁴⁵ Mirasolo did not tell Sousa that he called the Commissioner to offer a recommendation for him.³⁴⁶

457. Mirasolo stated that although he met Sousa at a DeLeo fundraiser, he did not have any further knowledge of Sousa's contributions to DeLeo and any contributions that Sousa made were not a factor in making a recommendation on his behalf.³⁴⁷

458. The Sponsor Lists we obtained indicate that DeLeo or someone from his office (as well as Senator Travaglini or someone from his office) did make a call on Sousa's behalf. A list from January 2007 bears a check mark next to Sousa's name. Sousa was appointed as a probation officer on July 26, 2007.

459. Sousa did not obtain the Brighton District Court probation officer position for which he states he sought a recommendation. He did, however, obtain the Somerville probation officer position around that same time.

³⁴³ Testimony of Arthur Sousa, October 7, 2010 (Exhibit 136), at 40-41.

³⁴⁴ Informal interview of Leonard Mirasolo.

³⁴⁵ Informal interview of Leonard Mirasolo.

³⁴⁶ Informal interview of Leonard Mirasolo.

³⁴⁷ Informal interview of Leonard Mirasolo.

460. Regional Supervisor Brian Murphy stated in an informal telephone interview with Independent Counsel that he recalled receiving two names with respect to the Somerville District Court position. Sousa was not one of them.³⁴⁸

461. Sousa appears to have been well qualified for the probation officer position. He served as an associate probation officer since 2001; has experience working in the court system; has done post-graduate work in government, including work at the Harvard Extension School; has a paralegal certificate; and is fluent in both Spanish and Portuguese.³⁴⁹ Sousa provided his resume and letters of recommendation.³⁵⁰

462. Based on the lack of evidence that Sousa was identified to the interview panel as a sponsored candidate and his credentials, we do not believe that Sousa's donations to DeLeo played a meaningful role in his promotion to probation officer.

VI. RETALIATION AGAINST REGIONAL SUPERVISORS

463. While some regional supervisors testified that they did not question the Commissioner's orders to engage in fraudulent hiring and promotion, others expressed misgivings and still others refused to advance at least some sponsored candidates who were manifestly unqualified. On occasion, the decision not to advance a sponsored candidate was accepted by O'Brien and his Deputies. But at least two regional supervisors were disciplined for their failure to do so, and others believed that if they failed to implement O'Brien's scheme, they too would be subject to retaliation.

³⁴⁸ Telephone conversation with Brian Murphy, October 20, 2010.

³⁴⁹ Testimony of Arthur Sousa, October 7, 2010 (Exhibit 136), at 8, 11; telephone conversation with Brian Murphy, October 20, 2010.

³⁵⁰ A copy of Sousa's resume and letters of recommendation, marked as exhibits 3 and 4 during his testimony, accompany this Report as Exhibit 136.

A. Ellen Slaney

464. As discussed above (*see supra* ¶¶ 193-194), when asked to get Doug MacLean onto the list of candidates for a final interview Ellen Slaney refused to cooperate.

465. Slaney testified that after the list of finalists had been sent to OCP, she met with Commissioner O'Brien in his office, and he angrily questioned her as to why MacLean had not made the list:

Q. As best you can recall, what conversation did you have with the Commissioner concerning this round of hiring?

A. He was – seemed physically upset with me. When I went in, I got called into office, and he wanted to know why I hadn't put Doug Maclean's name on the final list.

Q. And what did you say in response?

A. That I didn't think he was an appropriate candidate because he was a convicted felon and that I thought my position was one to make sure the best candidates got the job, and I didn't think he was the best candidate or an appropriate candidate.

Q. What was said next in this conversation, as best you can recall?

A. Well, you know, I also indicated to him that I understood that this was just my perception and that he had other things to consider. He said he did, that the budget was important and that these appointments were important to his being able to accomplish the budget that he needed in order to do our business. And I told him that I thought that having the names ahead of time was unethical, and I felt that it was cheating and that I couldn't do that. And he eventually told me that he understood and that he would not insist that I continue to be on the hiring panels if I did not want to do it, and I said I did not.

Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 18-19.

466. Commissioner O'Brien appears to have confirmed these events in a conversation with former First Deputy Commissioner John Cremens. Although his memory was vague concerning the decade-old incident, according to Cremens:

A. ... I do remember Ellen Slaney, though, asking to get off the interview committees.

* * *

Q. Do you have a memory of why she wanted to get off the interview panels?

A. She talked with [O'Brien] about it. I was not there. But I know, afterwards, he told me she wanted to get off the panels.

Q. Did he say why she told him she wanted to get off the panels?

A. I believe it was that she wasn't comfortable doing the interviews.

Q. And it was that she wasn't comfortable doing the interviews because she was getting names from the Commissioner?

A. That may have been it. You're asking me to remember a conversation a long time ago.

Q. Do you know one way or the other whether that was the reason she wanted to get off?

A. I believe that was it. The best of my memory, that was it.

* * *

Q. ... Did Commissioner O'Brien ever express to you any anger at Ellen Slaney over her failure to get a preferred candidate onto the list of finalists.

A. I vaguely remember hearing that, but I'm not sure I heard it from Commissioner O'Brien. I know I did hear it at that time that that had something to do with it, and then she came in and asked to be removed. I'm not sure of the sequence of events, whether she walked in and asked to be removed and then it became apparent what had happened or he was

upset about not getting somebody on and then she asked to give it up. I'm not sure of that sequence.

Testimony of John Cremens, August 6, 2010 (Exhibit 102), at 49-51.

467. When Slaney was later reassigned to perform interviews in December 2004, she testified that she had decided, based on her earlier experience, to go along with the rigged process:

Q. Why in 1999 or 2000 did you not go along with the Commissioner's request to get Doug Maclean onto the list of finalists, but so far in the interviews we've seen occurring in 2005 you have put candidates favored by the Commissioner's office ahead of people that you thought were more qualified?

A. I guess I had convinced myself that my vote, so to speak, as a member of the committee belonged to the Commissioner and that I was there just to represent his interest. That's how I tried to swallow it.

Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 77-78.

468. Nonetheless, she was again the subject of retaliation following the "botched" promotion of Lucy Ligotti to assistant chief probation officer in 2005.

469. Slaney testified (and her notes reflect) that about two weeks after the Ligotti incident Liz Tavares called to inform her that she was being pulled from interviewing for a position in the Bristol Superior Court, and that Deputy Commissioner Burke was going to take her place. Tavares explained to Slaney "It was because of Fall River, and they wanted to be sure that it was done right."³⁵¹

470. Subsequently Slaney, along with Edward Dalton, was called into a room at OCP by Deputy Commissioners Wall and Walsh. They were informed that they were being removed

³⁵¹ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 101-102.

from hiring, and instead were being reassigned to perform audits at Probation offices throughout the Commonwealth.³⁵²

471. Tavares stated that she recalled Slaney being removed from hiring in 2005, and confirmed that it was connected to the Lucy Ligotti incident. Tavares, however, provided what she deemed to be a justification for removing Slaney from hiring. According to Tavares, the removal of Ellen Slaney from hiring was justified because the panel had “used the wrong form”:

Q. Just to make the record clear, was there an incident in which Ellen Slaney, although the Regional Supervisor for a particular county, was not a member of the local interview panel?

A. Right, right. And I think there was an incident where she may have used a wrong form or what not, and it resulted in a conversation with the Commissioner, but I’m not privy to what happened. She was either asked – she either asked to be taken off or the Commissioner didn’t want to use her as a result of an incident.

* * *

Q. So there’s some form with directions on how to come up with the number of people to go on to the next round?

A. Exactly.

Q. And your memory is that, as best you can recall, she may have used the wrong set of instructions?

A. Exactly.

* * *

Q. Do you think Ellen using the wrong form, the wrong set of – the wrong methodology for selecting a slate of candidates justified taking her off of interviewing going forward?

A. At the time, I suppose I did, yeah.

³⁵² Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 155-56; Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 107-108.

Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 23-25.

472. The explanation provided by Tavares is meritless and a pretext for O'Brien's action. As discussed above, the instructions provide that only eight candidates per position may be forwarded for a final interview, not every candidate who appears on two lists. *See supra*, ¶¶ 93-94, 205. Witnesses consistently expressed that same understanding.³⁵³ Section 4.302(E) of the *Policies and Procedures Manual* is unambiguous that only eight names can come to the Commissioner. And in Chief Justice Mulligan's letter refusing the Ligotti appointment, he already rejected Tavares' reading of the instructions repeatedly citing § 4.302(E) of the *Policies and Procedures Manual*.³⁵⁴

473. In summary, Tavares confirmed that Slaney was removed from hiring and reassigned to audits over the Ligotti incident, and offered a false justification that had already been rejected by AOTC. There was, in fact, no valid basis for the disciplining of Ellen Slaney, a fact which had to have been apparent to Tavares.

B. Edward Dalton

474. As noted above, in 2005, Edward Dalton was also removed from interviewing and reassigned to audit duty. Dalton provided extensive testimony concerning the meeting in which that occurred, and testified that he believed he was being sanctioned for failure to advance the Commissioner's preferred candidates, Elzy Tubbs, to the final round interview:

Q. Did you believe that either as a result of the Tubbs incident or any other perception that you were not cooperating sufficiently with the commissioner's wishes, that you were sanctioned?

³⁵³ Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 30; Testimony of William Burke, July 22, 2010 (Exhibit 96), at 99-100.

³⁵⁴ March 29, 2005 letter (Exhibit 42) responding to Letter from Commissioner O'Brien to Chief Justice Mulligan dated March 28, 2005. A copy of the March 28, 2005 letter accompanies this Report of Exhibit 71.

- A. I do believe that, yes.
- Q. Will you tell us how you were sanctioned and why you believe that's the case?
- A. I indicated on April 4th of '05 Deputy Commissioner Fran Wall indicated, I believe it was during a senior staff meeting, which were held once a month, that he wanted to speak to Ellen Slaney, myself, and I believe Brian Murphy's name was mentioned, although when we met Brian was not there, that he wanted to talk to us after the meeting and wanted to meet with us I believe it was 2:00 o'clock on that afternoon.

At that meeting Ellen Slaney and I went into it; it was being conducted by Fran Wall and Pat Walsh was also a deputy commissioner who I guess had some supervision over us. And we were provided with a list of benchmark audits listed 1 through 13 of different courts that were behind in this audit process which each of the regional supervisors was responsible for based on which counties you had. We had to do these audits. And they were pretty intense.

We were given the list and told that these audits were behind and that we needed to schedule them and do the reports, the audit reports, and that each of our initials was down there who would actually write the report but we would be responsible for doing the audits and every other one would be done by either me or Ellen Slaney and that we were to make arrangements with the courts to go there, do the audits and do the reports, and we would not be doing interviews.

Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 107-108.

475. Dalton produced the list of audits that he and Slaney were assigned by Deputy Commissioner Wall.³⁵⁵ The courts in question were located throughout the Commonwealth, far away from Dalton and Slaney's homes in southeastern Massachusetts. The schedule appears to be put together to cause maximum inconvenience for the two regional supervisors.

³⁵⁵ A copy of the list of audits, marked as Exhibit 13 during the testimony of Edward Dalton, accompanies this Report as Exhibit 103.

476. Dalton explained that to have been pulled off of hiring within their own regions was a deliberate “embarrassment” that was understood by everyone in the region.³⁵⁶

C. Other Interviewers

477. Slaney and Dalton were the only two interviewers with respect to whom we received direct evidence of retaliation. However, many other interviewers testified that they feared retaliation if they did not comply in moving preferred candidates through the hiring process, with multiple interviewers referencing Ellen Slaney’s and Edward Dalton’s experiences as a reason to believe that the risk of retaliation was substantial.

478. Edward McDermott, for example, testified that he was afraid that he would face employment repercussions if he did not score the preferred candidates high enough during final round interviews. He volunteered Slaney’s experience as a reason to believe that the risk of retaliation was measureable:

- Q. Can you tell me why you felt you had to comply with selecting, if you will, the commissioner’s choice as opposed to your saying this is a rigged process, I’m not going to participate in that?
- A. Quite frankly, because I was afraid for my job. And if I can interject, I had also heard that regional supervisor Ellen Slaney had failed to comply with a request and that she was brought into the office, berated and threatened, and that was not lost on me. And I was three or four years into the probation service at 52 years of age or whatever and I felt that if I didn’t comply with a directive by my supervisor, that I might be in harm’s way.
- Q. So in effect you felt compelled to go along with this scheme because you felt there would be sanctions if you didn’t score the commissioner’s choice more highly than he deserved?
- A. I’m not very proud of it, but yes.

³⁵⁶ Testimony of Edward Dalton, August 17, 2010 (Exhibit 103), at 119.

Testimony of Edward McDermott, August 25, 2010 (Exhibit 116), at 37-38; *see also id.* at 57-58 (same).

479. Regional Supervisor Dianne Fasano broke down while testifying about her concern with retaliation, a concern based in part on Slaney's experience:

Q. Why did ... you go along with it?

A. Well, I think probably because I was concerned that if I didn't I'd be called into the commissioner's office. You know, when I got the call again I felt like, Well, you know, okay. Let's see how they do [this] type of thing. I think if it was somebody -- I'm sorry.

Q. Why don't we take a quick break?

[Witness crying.]

A. I think if I thought it was somebody that I thought would be, you know, not able to do the job or awful, I think I would say something but I can't say for sure because I would have been afraid. But I really don't remember passing on anybody that I thought wasn't appropriate.

Q. At the time that you passed along these names, I take it from your testimony that you were already aware of Miss Slaney and perhaps others being called in or otherwise retaliated against?

A. Yes.

Testimony of Dianne Fasano, September 3, 2010 (Exhibit 109), at 60-61.

480. Regional Supervisor Nilda Rios testified that she feared retaliation if preferred candidates did not make it to the next round of interviews, based on Ellen Slaney's experience:

Q. Did you believe that there would be repercussions if you didn't do what you were told to do?

A. That was my assumption.

Q. Are you aware of any instances where someone who was doing interviewing didn't put a candidate who was on the preferred list through to the next round, and there was any sort of punishment or repercussion as a result of that?

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A. Well, I know of someone who complained –

Q. Who was that?

A. - and I thought that they got punished.

Q. Who was this?

A. Ellen Slaney.

* * *

Q. You said it was your belief that you thought she was punished as a result of that complaint. What do you mean by that?

A. She and another Regional Supervisor were just like super loaded with work all of a sudden.

Q. Who was the other Regional Supervisor?

A. Eddie Dalton.

* * *

Q. So it's your impression that if you were to complain about how this hiring process was working, you would be on the hit list or on the outs with the Commission's office?

A. Yes.

Testimony of Nilda Rios, August 4, 2010 (Exhibit 130), at 88-89, 93.

481. Regional Supervisor O'Neil also voiced concern with repercussions, and noted the reassignment of Dalton and Slaney to audits as "repercussions there that I didn't necessarily want to engage in."³⁵⁷

482. Additionally, Bristol Superior Court Chief Probation Officer Eugene Monteiro testified that he put a preferred candidate's name on the list of final candidates for fear of retaliation against his local office:

³⁵⁷ Testimony of Richard O'Neil, August 3, 2010 (Exhibit 124), at 102-105.

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Q. Can you describe for me what your feelings were at this time?

A. My feelings were that Joe Dooley was the preferred candidate from the Commissioner's Office. My feelings were also that while I could have eliminated him at that stage and not sent his name up, I had concerns about any -- the after effects of all of that on myself and my office.

* * *

Q. You said that you ended up putting his name on the list because you were afraid of any effects to either yourself or your department?

A. Not myself, to my office.

Q. To your office. What repercussions were you afraid of?

A. Well, I don't have anything specific that comes to mind, but I didn't think that we would be looked at in a good light by the commissioner's office for any future hirings, personnel issues, or other needs.

Testimony of Eugene Monteiro, October 6, 2010 (Exhibit 118), at 54-55, 55-56.³⁵⁸

483. Later on, in an apparent reference what happened to Dalton following the Elzy Tubbs incident, Monteiro stated that he believed "the process would have been repeated. The process of interviews might have been repeated, and that I would not have been part of that repeated process, and that my office could be affected negatively in terms of future job fillings."³⁵⁹

484. More generally, Deputy Commissioner Bocko explained that while he was unaware of retaliation in the Department related to hiring, he expected retaliation against disloyal employees and had witnessed O'Brien retaliate against employees for other reasons:

³⁵⁸ Relevant excerpts of the testimony of Chief Probation Officer Monteiro accompany this Report as Exhibit 118.

³⁵⁹ Testimony of Eugene Monteiro, October 6, 2010 (Exhibit 118), at 86.

- Q. Did you have a concern that there would be some sort of retaliation, any adverse effect on your employment? Did you have those concerns?
- A. Based on experience in other situations besides hiring and promotion, I think like in many situations organizations employees who are considered disloyal would be shunned, snubbed, and perhaps given assignments that they weren't seeking.
- Q. Had you seen examples of that during Commissioner O'Brien's reign as commissioner?
- A. Yes. But I'm not remembering any regarding hiring or promotions.
- Q. What other context have you seen, you know, that sort of treatment?
- A. I've been asked to supervise a number of employees who had displeased the central office so they were sent to either my research department or to the training department because they had worn out their welcome at their regular assignment.

Testimony of Stephen Bocko, September 13, 2010 (Exhibit 94), at 73-74.

VII. CONCEALMENT OF FRAUDULENT HIRING DURING GRIEVANCE AND ARBITRATION PROCEEDINGS

485. Certain Probation Department personnel – probation officers, probation officers in charge, assistant chief probation officers, and first assistant chief probation officers – are entitled to grievance and arbitration rights pursuant to collective bargaining agreements between the Trial Court and the probation officers' union.

486. As part of the investigation, Independent Counsel investigated representations made by interviewers regarding promotional decisions during grievance and arbitration proceedings. Resource and time constraints prevented examining every file pertaining to grievance and arbitration proceedings on promotion decisions, but these files require the conclusion that senior Probation Department employees likely testified falsely during arbitration

proceedings, stating that names had not been pre-selected and that ranking and scoring decisions were based solely on the merits.

487. In particular, during arbitration proceedings, the members of the final interview panel (usually Wall and Walsh) ordinarily were called to testify. The arbitrators' decisions from these proceedings typically recount that ranking of the candidates was based on the interviewers' consideration of the candidates' answers to interview questions and the candidate's application materials.

488. Independent Counsel examined 38 arbitration files, and in none did a final interview panel member, in describing the basis for his or her scoring of a candidate, ever disclose that scoring of a candidate was based on receipt of that candidate's name from Commissioner O'Brien or one of his deputies. Instead, the panel members provided elaborate explanations as to why the candidates' answers justified the scores or rankings that they were given.

489. In addition, in at least two arbitration cases, Deputy Commissioners Wall and Walsh explicitly denied receiving any names, as noted in the arbitrators' decisions:

They asked each candidate the same four questions, each of which was worth 5 points, and independently scored the responses using a scoring key prepared by the OCP. *According to both Wall and Walsh, no one from OCP expressed a preference for any of the candidates.*

* * *

Both deputies testified that they had reviewed the materials the applicants had submitted prior to the interviews. *They also said that no one had spoken to them one way or the other about any candidate*³⁶⁰

³⁶⁰ A copy of the Harder arbitration decision accompanies this Report as Exhibit 9. A copy of the Adamson arbitration decision accompanies this Report as Exhibit 8.

490. Witnesses consistently testified that preferred names were handed down for most hires, and for promotional positions for which probation officer union members applied. Independent Counsel concludes that it is statistically improbable that in the three dozen cases for which we have records, none involved names communicated to interviewers. On at least some occasions, there is the potential that final interview panel members perjured themselves, falsely describing their decisions as being based on the answers provided by the candidates, when in reality the decisions were based on the instructions provided by the Commissioner.

491. Independent Counsel questioned the lawyers within Probation and AOTC who were involved in the grievance and arbitration process to determine why the rigging of interview scoring was not disclosed during arbitration. The evidence suggests that those responsible for evaluating the grievances and representing Probation/AOTC at grievances were content to put grievants to their proof. Because a lack of information concerning rigging benefited the Department, which invariably prevailed on grievance and at arbitration, no disclosure of promotion practices was made.

492. Former Deputy Commissioner and Legal Counsel Anthony Sicuso testified that his decision to grant or deny a grievance was based primarily on testimony from the grievant along with the written record, including the scoring and ranking sheets and the applicants' answers to the interview questions as noted by the interviewers. Sicuso testified that he did hear allegations from grievants occasionally that politically-connected candidates received artificially inflated-scores. While he testified that there was no way for him to know if a candidate's scores or answers had been inflated, he admitted that he never asked Deputy Commissioners if that occurred.³⁶¹

³⁶¹ Testimony of Anthony Sicuso, September 30, 2010 (Exhibit 134), at 54-57, 84-87.

Q. In the course of step three of a grievance, did any of the interviewers to whom you spoke ever say they inflated the scores of an applicant?

A. No.

A. Did you ever ask any of the interviewers during step three of the grievance process whether they had artificially inflated the scores of an applicant?

A. No. There was no reason to believe that they had. They were –

Testimony of Anthony Sicuso, September 30, 2010 (Exhibit 134), at 86-87.

493. In fact, Sicuso did have reason to question the interviewers' scoring the candidates. Specifically, Sicuso stated that he heard such allegations in a grievance brought by an employee named Karen Jackson. Jackson alleged that an individual who received a promotion to assistant chief probation officer, Amy Parente (who is related to Representative Marie Parente), had received inflated scores from the local interview panel. Sicuso said he asked Jackson to substantiate her claims, and she was not able to do so.³⁶² Sicuso stated that based on Jackson's lack of direct evidence, Sicuso let the matter drop. He never asked the interviewers whether they had in fact inflated Parente's scores.³⁶³

494. Sicuso's decision not to investigate the Jackson matter appears intentional and strongly suggests a studied ignorance of a tainted process. As reflected in the record of the arbitration concerning this incident, Chief Probation Officer Steve Alpers stated that Deputy Commissioner Burke called him before the interview and "expressed an interest in Ms. Parente being in the group that would be given a second interview," and Burke admitted telling Alpers

³⁶² Testimony of Anthony Sicuso, September 30, 2010 (Exhibit 134), at 87-90.

³⁶³ Testimony of Anthony Sicuso, September 30, 2010 (Exhibit 134), at 86-88.

“that there were two outstanding candidates in Ms. Jackson and Ms. Parente and that he hoped that they made the cut.”³⁶⁴

495. The union raised Burke’s admission as a ground in the arbitration, arguing that Burke had placed an “indelible stain” upon the process. The arbitrator agreed:

There is no doubt but that the interjection by Mr. Burke was uncalled for and could have potentially invalidated the entire promotion process. This is an instance of an individual outside the established promotion process attempting to interject his opinion into the process.

496. Nonetheless, the arbitrator rejected the grievance, noting, *inter alia*, that “[t]he comment was made before the first set of interviews. It was made to only one of the interviewers.” The arbitrator did not discover, but Regional Supervisor Francine Ryan, who also sat on the interview panel with CPO Stephen Alpers, testified to Independent Counsel that someone from the Commissioner’s Office (likely Deputy Commissioner Elizabeth Tavares) instructed her that Parente and Jackson were to make it through to the next round of interviewing. Ryan believes she then passed these names on to Alpers.³⁶⁵

497. Christine Hegarty, Human Resources Coordinator for AOTC who handled grievance proceedings, similarly testified that she did not really investigate the allegations made by grievants. Hegarty stated repeatedly that her role in the grievance proceedings was “limited” to determining whether the provisions of the union contract had been violated.³⁶⁶ Hegarty described the grievance process as “union driven” and stated that she relied on the union to make its case.³⁶⁷ She did not view it as her role to investigate beyond what was presented to her.³⁶⁸

³⁶⁴ A copy of the decision in the Karen Jackson arbitration accompanies this Report as Exhibit 7.

³⁶⁵ Testimony of Francine Ryan, August 9, 2010 (Exhibit 132), at 103-105.

³⁶⁶ Testimony of Christine Hegarty, October 20, 2010 (Exhibit 111), at 31, 42, 56-57. Relevant excerpts of the testimony of Human Resources Coordinator Hegarty accompany this Report as Exhibit 111.

³⁶⁷ Testimony of Christine Hegarty, October 20, 2010 (Exhibit 111), at 31, 39-42, 118-120.

Hegarty testified that in a few instances she was aware of allegations that candidates who had political connections were given preferential treatment in hiring within the Probation Department.³⁶⁹ Hegarty was dismissive of these allegations and did not press the issue:³⁷⁰

Q. Did you ever follow up or question the individuals from OCP about these alleged connections that the other more successful candidates had?

A. No. No.

Q. Is there a reason why you didn't do that?

A. Because they could -- they were there to hear it. They could have addressed it, and sometimes they did. Sometimes they just said, well, you know, you're throwing that out there, and, you know, you have nothing to prove that.

Testimony of Christine Hegarty, October 20 (Exhibit 111), 2010, at 53-54.

498. In most instances, Hegarty failed to consider information from the first round panel.³⁷¹

Q. Is there a reason then why you wouldn't go and, for instance, say I want to see the first round interviewing panel to have a better understanding of how the overall process worked?

A. Most -- again, it's union driven, and if they're not asking me to -- I'm not doing an investigation. All I'm doing is doing a -- I'm not relitigating the whole interview process. I'm really -- my role is to review what was done to make sure that it's in compliance with the contract. So if OCP can demonstrate to me that they have legitimate business-related reasons for what they did, that's where my role is.

Testimony of Christine Hegarty, October 20, 2010 (Exhibit 111), at 42.

³⁶⁸ Testimony of Christine Hegarty, October 20, 2010 (Exhibit 111), at 41-42, 119-120.

³⁶⁹ Testimony of Christine Hegarty, October 20, 2010 (Exhibit 111), at 51-52.

³⁷⁰ Testimony of Christine Hegarty, October 20, 2010 (Exhibit 111), at 41-42, 88-89, 137-38

³⁷¹ Testimony of Christine Hegarty, October 20, 2010 (Exhibit 111), at 40-41.

499. Hegarty heard the grievance that resulted in the arbitration brought by Karen Jackson. Hegarty's notes reflect that Jackson raised the allegation that Parente's name was given to the local round of interviewers as a preferred candidate. Her notes further appear to indicate that Burke told "TS" (Tony Sicuso) that he "saw 2 candidates on a list that would be the best – AP (Amy Parente) + KJ (Karen Jackson)."³⁷² Hegarty testified that Burke probably was not present at the grievance proceeding and her notes indicate that neither Burke nor Alpers attended.³⁷³ During her testimony (without her notes) Hegarty testified that she did not recall whether she investigated further Jackson's allegation that there were "other factors" involved in the interview process, but it was not her role as the grievance hearing officer to undertake such an investigation.³⁷⁴

500. Hegarty testified that she looked to the Commissioner's Office to prove that it had legitimate reasons for its promotional decisions. Hegarty did not question the documentation provided by the Commissioner's Office, but assumed that it was true and accurate.³⁷⁵ Like Sicuso, her siloed view of her role allowed her to ignore that the hiring process was rigged against a grievant who was equally or better qualified than the selected candidate.³⁷⁶

501. John ("Jack") Alicandro, who served as the President of the probation officers' union (NAGE) from 2002-08, testified that it was nearly impossible for grievants to succeed in grievance and arbitration proceedings because the Probation Department's hiring and promotion practices looked good on paper.

³⁷² A copy of these notes accompanies this Report as Exhibit 34.

³⁷³ Testimony of Christine Hegarty, October 20, 2010 (Exhibit 111), at 144.

³⁷⁴ Testimony of Christine Hegarty, October 20, 2010 (Exhibit 111), at 136 -37.

³⁷⁵ Testimony of Christine Hegarty, October 20, 2010 (Exhibit 111), at 30-31, 52-53, 55-57, 117-118.

³⁷⁶ Testimony of Christine Hegarty, October 20, 2010 (Exhibit 111), at 56-57.

502. By way of example, Alicandro testified that the Commissioner's Office often justified a particular hiring based on the "fact" that the selected individual scored the highest in the final round interviews and there was paperwork to corroborate the scores.³⁷⁷ Of course, because the scoring was often rigged in favor of sponsored candidates, this "fact" was essentially meaningless:

Again, you know the mantra out of the commissioner's office is the person who scores number one always gets the job. But, you know, it's like speaking of horse races, you hobble nine of the horses, the tenth horse who isn't hobbled is always going to win. At least the perception is that its fixed before you go in.

Testimony of John Alicandro, October 1,2010 (Exhibit 93), at 91.

503. Alicandro told us that grievants had informed him that the answers indicated on the scoring sheets were not the answers they had, in fact, given during the interviews.³⁷⁸ Alicandro testified that he believes the reliability of the scoring sheets is further undermined by the fact that all final round interview notes and scores were, as a matter of practice, made in pencil, leaving room for scores to be changed.³⁷⁹ During our review of selected final round scoring sheets, it appears in some instances that scores have been falsified. It is possible to see a score that was either erased or written over.³⁸⁰

504. Because those deciding the grievances and arbitrations did not look beyond the paperwork they were presented with, they never acknowledged even obvious unfairness. Both Alicandro and Hegarty testified that that not a single grievance relating to the promotion of an

³⁷⁷ Testimony of John Alicandro, October 1, 2010 (Exhibit 93), at 89-92. Relevant excerpts of the testimony of former NAGE Union President Alicandro accompany this Report as Exhibit 93.

³⁷⁸ Testimony of John Alicandro, October 1, 2010 (Exhibit 93), at 90-91.

³⁷⁹ Testimony of John Alicandro, October 1, 2010 (Exhibit 93), at 89-90, 104-106.

³⁸⁰ A copy of the February 17, 2005 interview scoring sheets, marked as exhibit 3 during the testimony of Patricia Horne, accompany this report as Exhibit 112.

employee within the Probation Department had ever been allowed.³⁸¹ At best, grievances were settled during the later stages of the proceedings, though even this was a rare occurrence.³⁸²

VIII. EFFORTS BY AOTC TO CONTROL THE HIRING PROCESS

505. Throughout Commissioner O'Brien's tenure, efforts were made by AOTC, in particular Chief Justice Dortch-Okara and Chief Justice Mulligan, to exercise increasing oversight of hiring and promotion by O'Brien.

A. Chief Justice for Administration and Management Dortch-Okara

506. As early as 2000, AOTC knew that there were significant and fundamental problems with the Probation Department's hiring practices.

507. Chief Justice Dortch-Okara was aware that Commissioner O'Brien was providing names of "recommended" candidates to the local interview panels and improperly influencing the hiring process. She testified that she concluded by 2000 that in many cases, hiring within the Probation Department was "fixed."³⁸³

Q. ... the totality of what you were looking at was that the commissioner's representative was utilizing some device, whether waiting to see what other people scored and then compensating for that, or some other method, but the net effect was that the commissioner's choice was being graded in such a way as to negate the recommendations of the other panel members?

A. Yes.

Q. Accordingly, by late 2000 or early 2001, it was known within AOTC that the commissioner's scoring was being essentially falsified; isn't that right?

³⁸¹ Testimony of John Alicandro, October 1, 2010 (Exhibit 93), at 60-61, 100-102; Testimony of Christine Hegarty, October 20, 2010 (Exhibit 111), at 25-26, 28-29, 32, 50-51.

³⁸² Testimony of John Alicandro, October 1, 2010 (Exhibit 93), at 100-101; Testimony of Christine Hegarty, October 20, 2010 (Exhibit 111), at 25-27, 49-50.

³⁸³ Testimony of Barbara Dortch-Okara, October 13, 2010 (Exhibit 107), at 11, *see also id.* at 29. Relevant excerpts of the testimony of Chief Justice Dortch-Okara accompany this Report as Exhibit 107.

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A. I don't want to say -- the commissioner scoring. You mean his -- the personnel he placed on these committees?

Q. Yes.

A. That their scoring in many cases did not reflect the merits of these candidates and rather reflected other issues or other influences.

Q. When you say "other issues or influences," what you mean is that to the extent there was recommendations to Commissioner O'Brien from legislators or others and to the extent that he favored certain candidates, his delegate to these interview panels was scoring in such a way as to promote those candidates?

A. Yes.

Testimony of Barbara Dortch-Okara, October 13, 2020, at 18-19.

508. Chief Justice Dortch-Okara testified that she was aware that AOTC's regional coordinators felt that their "voice carried no weight in the process because the two probation members of [the interview] committee would vote together and would achieve the result they desired without any input from the court."³⁸⁴

509. Jill Ziter, Regional Coordinator for the District Court Department, testified that she and other regional coordinators brought to the attention of Chief Justice of the District Court Zoll and his staff that they were being asked to pass certain candidates on to the next round interview regardless how the candidate actually performed during the interview process. Ziter testified that she complained to her superiors about the incident in Wareham at which Deputy Commissioner Wall provided names of recommended candidates and then, unhappy with Ziter's scoring of that candidate, falsely scored the candidate to ensure he made the next round of interviews.³⁸⁵

³⁸⁴ Testimony of Barbara Dortch-Okara, October 13, 2010 (Exhibit 107), at 10-11.

³⁸⁵ Testimony of Jill Ziter, September 23, 2010 (Exhibit 140), at 32-34.

510. In an attempt by the District Court to curb the influence of the Commissioner's Office on the hiring process, the regional coordinators were replaced by judges on the local interview panels. Ziter testified that the hope was that the Commissioner's representatives would be less inclined to try involving a judge in fraudulently advancing a particular candidate.³⁸⁶

511. Furthermore, Chief Justice Dortch-Okara met with the Chief Justice of the District Court Zoll and the Commissioner to attempt to reform the recommendation process. In letters to the Commissioner and Chief Justice Zoll dated January 10, 2001, Chief Justice Dortch-Okara set forth a process pursuant to which letters of recommendation received by one interview panel member were to be distributed to all panel members. Any oral recommendation was to be reduced to writing and distributed. Chief Justice Dortch-Okara's letter also stated that there was to be no discussion of any recommendation, though panel members could consider them as they saw fit.

First, Chief Justice Zoll and you will formulate a written policy concerning the type and content of preliminary discussions that the committee engages in before interviews commence. This policy will require that letters of recommendation received by individual committee members be distributed to other members and remain with the applicant's file following the interviews. Oral recommendations must be put in writing and distributed to committee members.

Second, there must be no discussion of the content of the recommendations by the committee. Of course, the recommendations may be considered by committee members in their evaluation of the candidates. However, it is intended that the individual committee members make their independent judgment concerning the weight to be given to the recommendations.³⁸⁷

³⁸⁶ Testimony of Jill Ziter, September 23, 2010 (Exhibit 140), at 52-54.

³⁸⁷ The letters from Chief Justice Dortch-Okara to Chief Justice Zoll and Commissioner O'Brien accompany this Report as Exhibit 59.

512. A policy was then drafted to implement such changes and incorporate a requirement that panelists “score each candidate independently and without favoritism.”³⁸⁸ Ziter prepared a memorandum commenting on the draft policy that contained other suggestions to ensure that interviews are conducted fairly. Ziter recommended that all interviewers be required to score the candidates simultaneously to avoid what had occurred in Wareham. Ziter also suggested that the composition of the interview panel be changed to include another representative from the District Court:

The panel now consists of one representative for Chief Justice Zoll, one representative for the Commissioner and the CPO. In instances where political pressure is applied, that seems to translate into two votes for the political choice and one against. Adding a fourth panel member who does not report to the Commissioner may help even out the process...

A copy of Ziter’s January 30, 2001 memorandum accompanies this report as Exhibit 61.

513. Chief Justice Dortch-Okara acknowledged that the *Policies and Procedures Manual* requires that all appointments be made on the merits, and she believed these changes would bring practices in line with that requirement.³⁸⁹ She also testified, however, that she felt “boxed in” by the amendment to M.G.L. c. 276, § 83 which gave additional appointment authority to the Commissioner. She believed the change was a “symbolic” statement by the legislature that she and the judges should be more “hands off” in Probation Department hiring.³⁹⁰

514. It appears that because of a hiring freeze, the proposed changes to the hiring practices were never implemented. Chief Justice Dortch-Okara’s term expired before hiring

³⁸⁸ The draft policy accompanies this Report as Exhibit 60; Testimony of Jill Ziter, September 23, 2010, at 69-70.

³⁸⁹ Testimony of Barbara Dortch-Okara, October 13, 2010 (Exhibit 107), at 24-26.

³⁹⁰ Testimony of Barbara Dortch-Okara, October 13, 2010 (Exhibit 107), at 70-72, 87-88.

began again, and she was not forced to address these issues. She had only limited involvement in hiring after M.G.L. c. 276, § 83 was enacted.³⁹¹

B. Chief Justice for Administration and Management Mulligan

515. Chief Justice Mulligan was appointed to the Chief Justice for Administration and Management position effective October 1, 2003, during the hiring freeze that began in 2001. It appears that the issues Chief Justice Dortch-Okara raised with respect to hiring were not communicated during the change in leadership, possibly because hiring was not active at that time.

516. When hiring resumed in late 2004, Chief Justice Mulligan began efforts to gain greater control and oversight. Correspondence between Chief Justice Mulligan and O'Brien indicates that in October 2004, the two met to discuss revisions to Administrative Order # 4. At that point, Mulligan agreed not to issue a revised Administrative Order #4 because O'Brien agreed to an "interim approach" which allocated decisionmaking with respect to chief probation officer hiring more equally among the judges and OCP. Mulligan and O'Brien agreed to maintain the two OCP representatives, but also allow for two representatives designated by the Chief Justice of the relevant trial court. This was intended to eliminate disproportionate weight being given to the preferences of OCP.³⁹²

517. O'Brien, however, continued to push for increased autonomy in hiring. In correspondence between Mulligan and O'Brien a month later, O'Brien sought to eliminate section 4.302(E) of the *Policies and Procedures Manual*. Failing that, O'Brien sought to simply remove the Chief Justice from the interview committee. Mulligan declined to grant O'Brien's

³⁹¹ Testimony of Barbara Dortch-Okara, October 13, 2010 (Exhibit 107), at 15-16.

³⁹² Letter from Chief Justice Mulligan to Commissioner O'Brien dated October 25, 2004. A copy of this letter accompanies this Report as Exhibit 35.

request but agreed to modify the last sentence of section 4.302(E) to take into account the statutory change that vested appointment authority in the Commissioner subject to approval by the Chief Justice for Administration and Management. As modified, section 4.302(E) now read:

In the case of a Probation Officer, Probation Officer in Charge, Assistant Chief Probation Officer, or First Assistant Chief Probation Officer vacancy, an interview committee consisting of the Commissioner of Probation (Chair) or his/her designee, the Chief Probation Officer of the Division, and a representative of the Chief Justice of the Department shall interview applicants consistent with the guidelines set forth in this section. Each candidate selected for an interview shall be evaluated and determined to be recommended or not recommended. A list not to exceed 8 names of candidates for each open position shall be forwarded to the *Commissioner of Probation for appointment subject to the approval for the Chief Justice of Administration and Management.*³⁹³

518. Had Mulligan agreed to O'Brien's request, significantly more authority would have been given to OCP in hiring, as there would have been no judicial oversight of the first round of interviews.

519. During the active hiring in 2004, Chief Justice Mulligan was able to exercise some control over which positions were filled and when. Mulligan strictly enforced the staffing formula used to determine the number of probation officers and supervisory positions needed in a particular court and refused to authorize job postings if not supported by the formula. Correspondence between O'Brien and Chief Justice Mulligan includes numerous examples of Mulligan refusing to allow O'Brien to post positions.³⁹⁴

520. As time went on, Chief Justice Mulligan seemingly relented in his attempts to limit the power of OCP. In March 2005, Mulligan informed O'Brien that judges were no longer

³⁹³ November 22, 2004 letter (Exhibit 36).

going to be participating in interview panels for probation officers (interviewing every candidate) because of the large number of interviews slated to take place. O'Brien had scheduled 3,800 interviews for 52 positions. Mulligan stated:

I do not believe that participating in the mind-numbing process of interviewing hundreds of candidates for a single position constitutes a meaningful method of selection. Further, it would be far too disruptive to court business to remove judges from the bench for an inordinate amount of time that it would take to conduct these interviews.³⁹⁵

521. Mulligan proposed the current model, under which a screening panel winnows the number of candidates to eight per position, with only eight going before the local panel on which a judge sits.³⁹⁶

522. Notably, although Mulligan proposed this process, his letter of March 22, 2005 indicated his belief that O'Brien had intentionally driven him to reduce the role of judges in the hiring process. As Mulligan put it:

Some months ago, when you and I discussed judicial involvement in the hiring of probation officers, you made it clear that you did not want to have judges involved in the process and that you considered it an imposition on your authority...I can only conclude that you have decided on 3,800 interviews so that you could fulfill your own prophecy that judges would not want to be involved. I consider such action to be contrary to the good order of the trial court.³⁹⁷

523. In several instances, Mulligan asked for additional information regarding various hires or promotions and withheld his approval of those appointments. For example, in March

³⁹⁴ Letter from Chief Justice Mulligan to Commissioner O'Brien dated November 30, 2004; Letter from Chief Justice Mulligan to Commissioner O'Brien dated December 28, 2004. A copy of this correspondence accompanies this Report as Exhibits 37 and 38.

³⁹⁵ March 10, 2005 letter (Exhibit 39).

³⁹⁶ March 10, 2005 letter (Exhibit 39).

³⁹⁷ Letter from Chief Justice Mulligan to Commissioner O'Brien dated March 22, 2005. A copy of this letter accompanies this Report as Exhibit 40.

2005, Mulligan received the complaint from Judge Gilbert Nadeau concerning the Lucy Ligotti hiring. Mulligan forwarded Judge Nadeau's letter to Commissioner O'Brien and asked for an immediate response.³⁹⁸ Mulligan's follow up letter to O'Brien indicates that the process, whereby nine candidates were forwarded to O'Brien as finalists, violated the limit on the number of finalists to eight. Mulligan therefore rejected Ligotti's appointment and directed O'Brien to select a candidate from the original list of eight.³⁹⁹

524. In April 2006, Mulligan once again appears to have questioned several appointments requested by O'Brien. In response, O'Brien challenged the Chief Justice and wrote to Mulligan:

Although I am gravely concerned that the approval process has far exceeded its scope, as defined by both policy and law, I have enclosed the requested information. I am confident the above referenced appointees are more than qualified and each have been appointed pursuant to existing policies and procedures.⁴⁰⁰

525. Mulligan responded by stating that "despite his reservations" he was approving the appointments of certain probation officer candidates, but refusing to approve the appointment of some associate probation officer candidates who did not meet the education and/or experience requirements. Mulligan also reiterated his authority to review the Probation Department appointments,

I take exception with your expressed view that the approval process has far exceeded its proper scope. I intend to review fully the qualifications of all candidates, both now and in the future, to

³⁹⁸ Letter from Chief Justice Mulligan to Commissioner O'Brien dated March 25, 2005. A copy of this letter accompanies this Report as Exhibit 41.

³⁹⁹ March 29, 2005 letter (Exhibit 42).

⁴⁰⁰ Letter from Commissioner O'Brien to Chief Justice Mulligan dated April 3, 2006. A copy of this letter accompanies this Report as Exhibit 45.

ensure that the hiring policies and requirements of the manual are met.⁴⁰¹

526. Mulligan kept to his word and continued to review the qualifications of candidates and the process overall. In September 2006, Mulligan withheld approval of a candidate because of discrepancies in the candidate's ranking by the local panel and the final interview panel. The local panel ranked her seventh, sixth and tenth respectively, whereas the final interview panel ranked her first.⁴⁰²

527. It also appears that Mulligan "sat on" appointments that he did not agree with. There are several letters from O'Brien to Mulligan asking him to approve appointments requested months earlier.⁴⁰³ This exacerbated the ongoing power struggle between Mulligan and O'Brien. In a letter of October 2006, O'Brien informed Mulligan that he had contemplated petitioning the Supreme Judicial Court to seek clarification of the scope of Mulligan's powers, because he believed that Mulligan's approval process has "undermine[d his] statutory authority of appointment."⁴⁰⁴

528. Mulligan was undeterred by O'Brien's implied threat. Later that same month Chief Justice Mulligan called in Deputy Commissioner Patricia Walsh and questioned her about, inter alia, rigging of the Probation Department's hiring process. A memorandum from Walsh reporting on the content of that meeting indicates that Mulligan asked her whether final round

⁴⁰¹ Letter from Chief Justice Mulligan to Commissioner O'Brien dated April 6, 2006. A copy of this letter accompanies this Report as Exhibit 46.

⁴⁰² September 26, 2006 letter (Exhibit 47).

⁴⁰³ Letter from Commissioner O'Brien to Chief Justice Mulligan dated October 2, 2006 regarding appointment of Carmen M. Collins; Letter from Commissioner O'Brien to Chief Justice Mulligan dated May 23, 2007. A copy of this correspondence accompanies this Report as Exhibits 48 and 54.

⁴⁰⁴ Letter from Commissioner O'Brien to Chief Justice Mulligan dated October 2, 2006 regarding approval of John F. Chisholm. A copy of this letter accompanies this Report as Exhibit 49.

candidates were given questions in advance and whether Walsh was ever directed to score candidates in a particular way.⁴⁰⁵ As Walsh recounted,

At this point in the meeting Frank Carney asked me a question. I cannot recall this question because immediately upon my answer, the Chief Justice asked me very directly if anyone told me how to score this candidate. I answered the Chief Justice and stated that no one told me how to score this candidate. Chief Justice Mulligan repeated the same question again and I responded again that I was not told by anyone how to score this candidate. At this point, Chief Justice terminated the meeting and thanked me for coming to his office.⁴⁰⁶

529. Based on that conversation, Mulligan pressed the issue again and informed O'Brien by letter that he wanted to revise the hiring policies and procedures. Mulligan did not raise the issue of rigged hiring directly, but instead directed Commissioner O'Brien to reconsider the overall structure of the hiring process:

I would like you to restructure the existing practice and produce a procedure which will result in the selection of the most qualified candidate by either abolishing the central [final] interview panel or by establishing a meaningful integration of the work of the local panel with that of the central panel.⁴⁰⁷

530. In response, O'Brien proposed to make the ranking and comment sheets from the local panel available to the final interview panel. Mulligan, however, maintained his position that it was not sufficient, given past disparities in the rankings, and sought to require the following procedure:

Where there is a substantial discrepancy between the rankings of the two panels, the central panel should communicate with the members of the local panel (e.g. via a conference call) to discuss the divergence of views. If the difference of opinion persists, the central panel should prepare a written explanation of the reasons

⁴⁰⁵ A copy of Walsh's October 2, 2006 memorandum accompanies this Report as Exhibit 50.

⁴⁰⁶ Walsh's October 2, 2006 memorandum (Exhibit 50).

⁴⁰⁷ October 17, 2006 letter (Exhibit 51).

underlying the divergent views, along with the rationale for selecting the final candidate.⁴⁰⁸

Such a procedure, by decreasing the autonomy of the final interview panel, would have provided the judges a potentially greater voice in selecting candidates and decreased the ability of Commissioner O'Brien to rig the system in favor of sponsored candidates.⁴⁰⁹

531. In response, O'Brien misleadingly described to Mulligan the reason for disconnects between the scoring of the local and final interview panels, suggesting that these were based on different questions asked by the different panels, directing attention away from his frequent rigging of the final result:

Second, when there is what you term to be a “disconnect” between the assessments of the local panel and those of the central panel, it is primarily attributable to the fact that each panel is asking different questions and evaluating different attributes. The local panel, in a relatively brief and general interview, asks questions to evaluate the general quality and relevance of a candidate's experience, education, training and general knowledge related to the position to identify the best qualified candidates to advance to the final interview. The central panel, in a more challenging and detailed final interview, asks questions to evaluate specialized and particular knowledge, skill and experience related to the position; and to evaluate how a candidate would put those attributes to use in the position for which the candidate has applied.⁴¹⁰

532. Mulligan's correspondence to Commissioner O'Brien through 2008 continued to question discrepancies in the rankings determined by the local and final interview panels.⁴¹¹ In

⁴⁰⁸ Letter from Chief Justice Mulligan to Commissioner O'Brien dated January 23, 2007. A copy of this letter accompanies this Report as Exhibit 52.

⁴⁰⁹ Interestingly, by letter of January 25, 2007, O'Brien appears to have agreed to Mulligan's proposed revisions to the procedure for handling scoring discrepancies between the local and final panels. Letter from Commissioner O'Brien at Chief Justice Mulligan dated January 25, 2007. A copy of this letter accompanies this Report as Exhibit 53. None of the witnesses who testified regarding the hiring and interview process, however, indicated that such a procedure was ever implemented.

⁴¹⁰ January 25, 2007 letter (Exhibit 53).

⁴¹¹ Letter from Chief Justice Mulligan to Commissioner O'Brien dated March 6, 2008; Letter from Commissioner O'Brien to Chief Justice Mulligan dated March 11, 2008; Letter from Chief Justice Mulligan to Commissioner

response to Chief Justice Mulligan's inquiries, O'Brien continued to misleadingly discuss the reasons why discrepancies may exist between the local and final panels, and between the judges and the probation department employees serving on the local panel:

Discrepancies between the rating of the justices and probation managers at the screening stage of the hiring process are to be expected. Probation managers and justices perform two separate functions in the Trial Court and it follows that they will assign different weight to the various qualities of candidates. Nevertheless, this is a healthy dichotomy and is useful in the process of winnowing down the number of candidates that are forwarded to the final round. Here, 7 of the 13 candidates for the position were eliminated. Accordingly, the first round of interviews served its purpose of narrowing the number of candidates eligible for selection in the final round.

Furthermore, I am sure you understand that I do not know what factors or information the local panel relied upon in rating the candidates. I was not present at the interviews and there is always an element of subjectivity on the part of interviewers that can not easily be measured...⁴¹²

533. Although the written record reflects considerable effort by Chief Justice Mulligan to address the integrity of O'Brien's hiring and promotion, these efforts appear to have been mostly indirect and around the edges of the problem. Chief Justice Mulligan did not typically question whether candidates were the most qualified, and he generally relented once provided some explanation by the Commissioner. Chief Justice Mulligan took this approach in part because he had a very narrow view of his authority to reject the Commissioner's proposed candidate:

I considered my authority overseeing probation's hiring is as follows: One, that probation hired pursuant to the policies which were in the personnel policies and procedures manual, that is, they conducted a process that was consistent with the policies; two, that

O'Brien dated March 14, 2008. A copy of this correspondence accompanies this Report as Exhibits 56, 57 and 58.

⁴¹² March 11, 2008 letter (Exhibit 57).

they had -- my review that they had adequate funds to actually engage in the hiring, which I suppose is the very first step, one; and, three, that their hiring complied with the affirmative action policies in the trial court.

There are, as you say, statutes. And there was outside sections in the budgets for the last several years reinforcing the exclusive appointment power in the commissioner of probation relative to hiring within the probation service.

Testimony of Robert Mulligan, October 4, 2010 (Exhibit 122), at 4-5.

534. The statutes and budget sections Chief Justice Mulligan referenced are the amended version of M.G.L. 276, § 83, and budgetary enactments since 2000, which have purported to give the Commissioner exclusive hiring authority. Based on these provisions, Chief Justice Mulligan believed his authority to reject an appointment was limited to situations in which the Commissioner failed to follow Trial Court's hiring policies and procedures.

535. Chief Justice Mulligan may have been reluctant to openly challenge O'Brien despite the fact that the *Policies and Procedures Manual* requires hiring the "most qualified individuals" based solely on the merits (with limited exceptions for affirmative action and under collective bargaining agreements). If lesser candidates were being selected based on considerations other than merit, the Chief Justice could reject their appointment. During his testimony Chief Justice Mulligan agreed that, based on language in the *Policies and Procedures Manual*, he has authority to ensure that hiring is merit-based:

Q. The statutory language or the regulatory language of the policies and procedures manual indicates in the first two paragraphs of Section 4.000 that hiring shall be of, quote, "the most qualified individuals." And it goes on in the second paragraph of 4.0 to say that such hiring shall be, quote, "based on their qualifications."

Didn't that give you the authority to reject, in the event that you determined that hiring with respect to the most qualified individual did not occur?

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A. I suppose it -- on the face of it, it may -- I guess it did give me the -- but to -- yeah. I'll answer -- leave the answer the way it is.

Q. Apart from whether you would have known the intricacies of particular recommendations and how you could be expected to fully understand either the qualifications of the proposed appointment or whether an individual was most qualified, am I missing something? Or does the regulation appear to give you the power to reject, according to the statute, if standards are not met, including the most qualified applicant?

A. No. I think you're correct. I believe you're correct.

Q. If you look at page 6 of 17, Section 4.304 on nepotism under Subsection A, it says, quote, "It is the policy of the trial court that all appointments be made solely on the basis of merit," end quote. Then it goes on to talk about nepotism as such.

Doesn't that reinforce the notion that whatever appointment authority the commissioner had, it was subject to the hiring being solely on the basis of merit?

A. It does.

Testimony of Robert Mulligan, October 4, 2010 (Exhibit 122), at 21-22.

536. Even if the Chief Justice had taken a more expansive view of his oversight authority, it is not likely that the Chief Justice had the resources to review every appointment that came before him. As Mulligan explained during his testimony, the Probation Department is only one of the many parts of the Trial Court over which AOTC must exercise oversight:

Probation was one aspect of the [CJAM]'s work, and we had seven trial court departments. I was very actively involved during a lot of this time with problems with buildings, including a building in East Cambridge that took a lot of my time, Sullivan Courthouse. We were putting new procedures in place relative to metrics as a result of the Monan report.

So there were a lot of things going on in my mind at the time, other than just probation. And maybe in some ways, because of the distastefulness of dealing with Commissioner O'Brien, it was

perhaps an avoidance situation relative to meeting with him. And I think I alluded to that previously.

But as I say, my memory isn't clear on all of this because there were -- I was being occupied in many different spheres. And I would say for the first three years that I was in that position as a [CJAM], I was over occupied -- if I could put it that way -- to the point of really responding to so many things. It was really an overload situation for me.

Testimony of Robert Mulligan, October 4, 2010 (Exhibit 122), at 53-54.

537. In addition to Chief Justice Mulligan's attempts to ensure that the most qualified candidate was hired, Mulligan also sought, as far back as 2005, to control O'Brien's contacts with the legislative branch. In an incident in April 2005, Mulligan questioned O'Brien's position on the transferability of funds within the Trial Court and demanded to know whether O'Brien had communicated a Departmental position to any legislator or legislative staff member.⁴¹³ O'Brien responded that he had not had such communications.⁴¹⁴

538. Mulligan's efforts increased significantly in 2008 when he ordered O'Brien and his staff not to have any contact with the legislature. In a January 24, 2008 letter, Mulligan stated:⁴¹⁵

As I informed you, I want you or anyone acting on your behalf to coordinate with Elizabeth Cerda all future contacts with any and every member of the Legislature, House and Senate.

539. Mulligan followed up this directive by ordering O'Brien to keep logs of his contact with legislators. Lucia Vanasse testified that she was instructed to keep logs of all

⁴¹³ Letter from Chief Justice Mulligan to Commissioner O'Brien dated April 7, 2005. A copy of this letter accompanies this Report as Exhibit 43.

⁴¹⁴ Letter from Commissioner O'Brien to Chief Justice Mulligan dated April 8, 2005. A copy of this letter accompanies this Report as Exhibit 44.

⁴¹⁵ Letter from Chief Justice Mulligan to Commissioner O'Brien dated January 24, 2008. A copy of this letter accompanies this Report as Exhibit 55.

communications that came in from any member of the legislature as was the Commissioner.⁴¹⁶

Vanasse produced copies of these logs which show the name of the legislator who called. In the “Regarding” column, nearly every entry indicates “recommendation.”⁴¹⁷ Vanasse further testified that when the hiring process stopped, she and the Commissioner were no longer required to keep these logs.

540. In summary, Chief Justice Mulligan exercised a responsible level of control over hiring and recognized flaws in the system, but neither he, nor Chief Justice Dortch-Okara, were successful in preventing the fraudulent hiring that occurred. There remains the question whether either Chief Justice might have gone further by activating the Advisory Committee authorized in M.G.L. c. 211B. The Chief Justice is the statutory chair and is empowered to “establish and promulgate standards for the appointment [and] promotion ... of all personnel within the trial court” More particularized standards may be an avenue to address abusive hiring practices in the future. Nonetheless, the Chief Justice faced a hostile Commissioner determined to institutionalize a corrupt and fraudulent process which the Chief Justice could not have been expected to correct given legislative directives empowering O’Brien to appoint. Both Chief Justice Dortch-Okara and Chief Justice Mulligan acted with integrity to counterbalance O’Brien.

IX. THE FAILURE OF LEGAL COUNSEL TO THE DEPARTMENT TO MONITOR AND ENSURE THE DEPARTMENT’S LEGAL COMPLIANCE

541. During the years of senior management participation in the fraudulent hiring and promotion process, Legal Counsel for the Department remained mum. The absence of any cautionary advice is troubling, and suggests either that Legal Counsel was unaware of massive

⁴¹⁶ Testimony of Lucia Vanasse, July 20, 2010 (Exhibit 138), at 61, 80.

⁴¹⁷ A copy of the telephone logs, marked as exhibit 3 during the testimony of Lucia Vanasse on July 20, 2010, accompanies this Report as Exhibit 138.

fraud within the Department involving dozens of employees, or that Legal Counsel was aware of the fraud but acquiesced in it.

542. Rule 1.13(b) of the Massachusetts Rules of Professional Conduct address the responsibilities of legal counsel in an organization who has knowledge of wrongdoing by others in the organization:

If a lawyer for an organization knows that an officer, employee, or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

543. “[T]he highest authority that can act on behalf of the organization” in this instance is likely the Administrative Office of the Trial Court and/or the Supreme Judicial Court, which exercises oversight over the Department and had the authority, for instance, to suspend Commissioner O’Brien and to initiate this investigation. *See* Massachusetts Rules of Professional Conduct, Comment 9 (“For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for the purposes of this Rule.”).

544. As described herein, there is reason to believe that both Legal Counsel to the Department in the relevant time period – former Deputy Commissioner Anthony Sicuso and Deputy Commissioner Christopher Bulger – were aware of the fraud and ignored it, or had reason to be aware and turned a blind eye. Furthermore, testimony by Bulger underscores that

his loyalty lies first with Commissioner O'Brien, not the Department. His "briefings" to O'Brien during the suspension are in direct conflict with the Department's interest and reflect the high probability that Bulger knew the extent of the fraud for years but maintained "plausible deniability."

A. Former Deputy Commissioner Anthony Sicuso

545. Former Deputy Commissioner and Legal Counsel Sicuso, who represented the Department from 1993 until his retirement in 2008, disclaimed any knowledge of the rigged hiring during his testimony. Indeed, he disclaimed knowing even that politicians were calling the office to sponsor candidates, an assertion that Independent Counsel does not credit:

Q: [W]hen you were in the Office of the Commissioner of Probation under Jack O'Brien, were you aware that the Commissioner's office was receiving telephone calls from politicians to put a word in for applicants for hiring or promotion in the department?

A: No. I have no direct knowledge of anything like that. You'd hear a rumor perhaps or read something in the papers. I never saw or heard or was present at or had anybody tell me that they were there when a call came in or something like that.

Testimony of Anthony Sicuso, September 30, 2010 (Exhibit 134), at 78.

546. Despite carefully chosen words, Independent Counsel finds Sicuso's testimony to have been untruthful. Based on other testimony and the volume of calls received by OCP from politicians, it was common knowledge that politicians sponsored applicants. Sicuso could not have been ignorant of that basic reality.

547. Sicuso testified that he lacked any direct knowledge that names of sponsored candidates were being given to the interview panels:

Q: During the years you were legal counsel under Commissioner O'Brien, did you even observe Commissioner O'Brien or someone working for

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Commissioner O'Brien, such as a deputy commissioner, pass names to an interview panel of candidates that they wanted the interview panel to make sure got to the next round?

A. No, I never observed that,

Testimony of Anthony Sicuso, September 30, 2010 (Exhibit 134), at 79-80.

548. However, Sicuso had ample reason to believe that hiring was being rigged. The evidence in the Karen Jackson grievance and arbitration established that Deputy Commissioner Burke had directly interfered at the local panel level. More troubling, Sicuso testified that he once had a conversation with Ellen Slaney in which she appeared to be upset. Sicuso had the sense that Commissioner O'Brien wanted her to falsely score a candidate and, because she did not follow that direction, she was taken off of hiring.⁴¹⁸ Sicuso testified that this conversation did not cause him to scrutinize the hiring practices within Probation:

Q. Did that give you any concerns as legal counsel for the department that scoring was in some way being fixed or influenced by the commissioner?

A. Scoring in general? No, not necessarily. Because I was still looking at documents which in grievances were not -- there was not a case factually in terms of the qualifications. If an issue came up as a result of a grievance because of that, I would be looking at the actual qualifications of the person, of the people involved. And I never saw issues that were not really defensible.

Testimony of Anthony Sicuso, September 30, 2010 (Exhibit 134), at 83-84.

549. Sicuso appears to have consistently engineered "plausible deniability" in order to protect himself at the expense of unknowing Probation applicants. So long as the Department was "winning" grievances and prevailing at arbitration – as long as there was a defensible argument that a selected candidate was "qualified" – Sicuso placed his head firmly in the sand.

⁴¹⁸ Testimony of Anthony Sicuso, September 30, 2010 (Exhibit 134), at 81-84.

As legal counsel for a public agency, however, and particularly in light of the Jackson grievance and his conversation with Slaney, Sicuso acted unprofessionally. His conduct betrayed his obligations as chief Legal Counsel to the Department. His apparent dishonesty during his testimony simply perpetuated that unprofessional conduct.

B. Deputy Commissioner Christopher Bulger

550. Christopher Bulger has served as a lawyer in Probation since 1998, becoming Legal Counsel in the Department in 2008.⁴¹⁹

551. As such, Bulger knew the requirements of the *Policies and Procedure Manual* with respect to hiring:

Q: Did you understand the policy to require the Commissioner to make appointments solely on the basis of merit?

A: Yes. I had an understanding that appointments should be based upon merit.

* * *

Q: ...Did you understand at all relevant times that Commissioner O'Brien's obligation was to make appointments "solely on the basis of merit"?

A: Yes. Yes. That was my understanding.

Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 103-104.

552. Despite this awareness, Bulger knew or "assumed" that hiring and promotions were routinely motivated by factors other than merit:

Q: You know, do you not, that it was a routine practice in the office to communicate names of preferred candidates ... to interview panelists at the regional level prior to those interviews ...?

⁴¹⁹ In 2008, Bulger was appointed Deputy Commissioner by O'Brien. He assumed the duties as Legal Counsel to the Probation Department.

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A: I understand that to be the case now that it was routine practice. Prior to the [*Boston Globe*] article, I assumed it occurred anyway. I assumed it happened anyway

Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 44.

553. Having earlier testified that he assumed that the hiring and promotion process was fraudulent, Bulger retraced his verbal steps, claiming to be agnostic even now:

Q: No, Mr. Bulger. You knew it was happening didn't you? You couldn't possibly work there for 12 years and not know how the hiring was being done as legal counsel, could you?

A: But I didn't have knowledge of any *particular* case or (emphasis added)

* * *

Q: You're a graduate of Williams College and a law school. You deal with grievances. You know the allegations of the *Globe*. You've had two or three [conversations per week] with Mr. O'Brien since [O'Brien was suspended]... And you're telling me you still think all the hiring in the Probation Department was on the merits? ...

A: I ... at this time I do not know what to believe. I am telling you I don't know what to believe.

Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95) at 49, 57-58.

554. During the course of the investigation, Bulger confirmed directly with O'Brien that names were provided to interview panels. He repeatedly stated that O'Brien expressly told him so:

Q: You talk to Commissioner O'Brien two or three times a week now since his suspension and almost daily prior to this suspension, is that correct?

A: Yes. Yes.

* * *

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Q: Mr. O'Brien has told you in fact he did pass names along to the regional interview panelists, correct?

A: Yeah. He would, yeah. Yeah.

* * *

A: ...He's told me that he passes the - - - passed the names along. He did

* * *

Q: ...Have you had conversations [with O'Brien] specifically about hiring practices and the fact that Commissioner O'Brien gave names to the deputy commissioners or others in the office to communicate to regional administrators prior to interviews?

A: Yes. He -- since his departure, he mentioned that he had given names ... mentioned that was done, yeah."

Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 51, 62, 68, 42.

555. Bulger's apparent indifference to or willful blindness regarding fraudulent hiring prior to this investigation also extended to his testimony regarding the Sponsor Lists. Bulger reluctantly acknowledged telling O'Brien that the spreadsheets had surfaced in the investigation:

Q: Are you saying you don't know today whether or not you've ever had a conversation with Commissioner O'Brien regarding the fact that there's a list of political recommendations for candidates?

A: ... I think I *may* have been the person to mention it in the conversation [with O'Brien]. *I don't know* that he had - - he offered anything with respect to it. *I can't remember* if it was because of my interaction with Maria or this article but I believe *I mentioned the existence* of this database [containing a Sponsor List] (emphasis added).

* * *

Q: You know you talked to Commissioner O'Brien and you identified the fact that you knew of a list is that correct?

A: Yes. Yes.

Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 83-84.

556. Bulger testified that he first saw the spreadsheet on the computer screen of Maria Walsh, a legislative liaison in the Department, who told him “there were names she recorded regarding recommendations.” Bulger advised her to turn it over to Independent Counsel but despite that testimony, Bulger claimed not to have even looked at the list:

Q: As legal counsel, did you go get the document and look at it?

A: No.

* * *

Q: I understood you to tell me that prior to the point at which Maria Walsh came to testify before Independent Counsel you saw at her desk on a computer screen a list and she asked you about producing that list and you advised her to produce the list; is that correct?

A: Yes.

* * *

A: . . . I don't even know if I leaned to look at her computer or not but she said, you know, I have a list of people. She pointed to the screen. I can't recall exactly but she said, you know, I have a list of people. I don't even know what she said but she indicated there were names she recorded regarding recommendations. And I just said, Take it. Take it with you [to Independent Counsel].

Q: Before you told your employee who was coming to testify before Independent Counsel to disclose a particular document about which she was asking you, did you look at the document to see what it was?

A: . . . I don't think it was my role to review documents that someone was going to bring down to this investigation.

* * *

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Q: Did you put your hand over your eyes so you couldn't see what she was showing you on the screen before you told her to disclose it?

A: Her screen is - - I was walking by the door and her screen was sideways and she described - - she said, I have lists of names on this thing. What do I do?

Q: Mr. Bulger, please. You're legal counsel to the Probation Department. There is an investigation going on which you have said you treat as a criminal investigation. Your employee comes to you and says, here's a list of recommenders for particular candidates. Do I take this to Independent Counsel?

And you said yes without looking at the list?

A: Yes. Yes.

* * *

Q: You didn't even have an understanding what the list was. Is that what you're telling me now?

A: My understanding is it was a list of people who called in.

Q: How did you get that understanding?

A: From what she said. "I have a list of names from people who called in."

Q: So despite her telling you something that you say you never knew before that and showing you on the screen that it was a list of names of people recommending candidates, you're now telling me you didn't look at it?

A: Yes.

Q: And despite not looking at it, you later had a conversation with Commissioner O'Brien about what it was. Is that what you're saying?

A: I - - again, what I - - the feeling I had - -

* * *

Q: You had a conversation with Mr. O'Brien about the fact that you had seen a list and what it was, isn't that correct?

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A: I don't know that I told him I saw a list because - -

Q: Well, how did you tell him what it was then?

A: ... I understood that Maria had kept a list of names of people that called in. I didn't ask for a printout. I didn't study the screen. I was walking by the office.

* * *

Q: And so you're now saying you didn't look at it?

A: Right.

Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 78, 82, 85-89.

557. Independent Counsel views the testimony of Bulger as having been both evasive and untruthful. He had been a lawyer in the Commissioner's office for twelve years and was partially responsible for grievance proceedings which challenged specific promotions. Bulger is also a confidant of O'Brien, frequently authoring O'Brien's most sensitive correspondence.

558. It is clear that Bulger's foremost loyalty even today lies with Commissioner O'Brien, not the Probation Department. When O'Brien was initially told of his suspension, Bulger sought to participate in the suspension meeting, apparently as counsel for O'Brien. More tellingly, Bulger conceded during his testimony that he has been informing Commissioner O'Brien "two or three times a week" of developments in this investigation:

Q. What's the purpose of your discussions with Commissioner O'Brien -

A. Just -

Q. - since his suspension?

A. The purpose now is to just go over the events that are taking place in our office.

Q. What events are you talking about?

A. The investigation.

Q. Are you saying that you keep Commissioner O'Brien posted on what you know about the investigation?

A. If I hear of something, I will tell him, yeah.

Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 38-39.

559. Bulger told Independent Counsel that he wanted to keep O'Brien informed precisely because he viewed O'Brien as "the target of this investigation."⁴²⁰

560. Bulger also revealed during his testimony that he is effectively of one mind with Commissioner O'Brien that manipulating hiring and promotion is acceptable at some level because, to paraphrase, "everyone does it":

Q. Have you talked with the commissioner at all with respect to hiring practices?

A. Um, I did. I –

Q. What did he say and what did you say?

A. Um, my understanding is that, you know, I think he would say, yeah, there were phone calls made to him from all walks. And our view is that – I mean, I guess I share his view that it happens in a lot of agencies. So I guess it was, you know – that's what we would discuss. That this is something that happens everywhere to some degree.

Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 39-40.

561. To the extent Bulger's credibility may be relevant to the Court, Independent Counsel observed Bulger to be dishonest in responding to questions under oath. He made repeated attempts to deflect the questioning. Many of his answers were blatantly false in the view of Independent Counsel, particularly as regards his knowledge of fraudulent hiring, O'Brien's direct role in such hiring and promotion, and his claim that he advised the production to Independent Counsel of a Sponsor List database though he never looked at it nor completely

⁴²⁰ Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 64.

understood what it was. Despite his claimed lack of understanding, he advised a Probation employee to disclose the list to Independent Counsel and subsequently discussed the list (which he says did not really see) with O'Brien.

562. Bulger's role as counsel to the Department has been irrevocably compromised by his misplaced loyalty, not only to Commissioner O'Brien but to business-as-usual in Probation. Bulger remains an advocate for the "return" of Commissioner O'Brien whom he praised as a "great Commissioner" and "a man of integrity."⁴²¹

X. PROBLEMS ARISING FROM THE FRAUDULENT HIRING AND PROMOTION PROCESS

563. While legal precedent supports the characterization of the fraudulent hiring and promotion process as a criminal fraud, the illegality of the scheme is only one reason why this corruption of the process should never have occurred and must be prevented in the future. As set forth in this section of the Report, the scheme had and will continue to have a number of severely detrimental effects on individuals and on the Department itself.

A. Unfairness to More Qualified Candidates

564. One obvious consequence of a system in which preferred candidates are purposefully moved through initial rounds of interviews, is that potentially more qualified candidates are denied the opportunity to compete in subsequent rounds of interviews, including the final round. Accordingly, by definition, they were deprived of positions to which they may have been entitled.

565. First Deputy Commissioner Tavares, for example, agreed that the intent of providing names of preferred candidates to the interview panels was to have the preferred candidates hired instead of candidates who outperformed the Commissioner's choices:

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- Q. So it was your understanding that what these Regional Supervisors were supposed to take away from getting a call from you with a list of names was that, you know, if this person ordinarily may have only been the 30th best person out of say the 50 in my example, as long as they were responsive, you should still try and put them in the top eight to get to the next round?
- A. I think if the Regional Supervisor had a sense that the person was responsive to the questions and could convey to the committee that they understood the role of a Probation Officer based on these questions, then if they were recommended, then see if you can move them up to the final round.
- Q. This is just to clarify that. So long as somebody was in some sense qualified, even if they really weren't one of the best eight people who interviewed that day, if they got a recommendation, then you should list their name among the top eight?
- A. If they were responsive and two committee members agreed, yes.

Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 101-102.

566. Regional Supervisor Nilda Rios also acknowledged that more qualified candidates during the screening round of interviews for probation officer positions were knocked off the list of candidates eligible for a second round of interviews:

- Q. If you had an individual who was supposed to make it into the top ten, they're 15th, they needed four points to get into the top ten –
- A. Mm hmm.
- Q. – how would you determine who came out of the top ten if that person needed a slot there?
- A. The lowest one.

Testimony of Nilda Rios, August 4, 2010 (Exhibit 130), at 96-97.

⁴²¹ Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 142.

567. Regional Supervisor O’Neil told us that he found it “appalling” that less qualified candidates were getting final interview slots and jobs over more qualified candidates, and he eventually asked to be taken off of interviews:

Q. What specifically were you uncomfortable about?

A. I just had problems with the whole integrity of the process and that -- I would say “uncomfortable” probably is not strong enough. I found it really appalling, quite frankly, that people, because of their connections, were getting jobs or certainly making it to a finals where candidates that I thought were better qualified were not. Because I knew that these were the courts that I head and supervise, for one. One, I was fundamentally opposed to just the concept that you’re going to get jobs because of who you know, and that was kind of, I don’t know, for some of my colleagues, like what’s the big deal? I mean, I didn’t come in the system through that way. I certainly wasn’t naive to think that that’s not how some people got their jobs because of connections. And some people have turned out very well. As I said to you in our last interview, I personally experienced this with the Chief’s position in Suffolk and the person that ultimately got the job. So I’m not naive to think that this doesn’t happen. But the more it happened and the frequency in which it happened, I just – I found it difficult to participate in the process. On the other hand, if I was told to do it, I would have done it.

Testimony of Richard O’Neil, August 3, 2010 (Exhibit 124), at 99-100.

568. Dianne Fasano likewise agreed with the statement that she had placed candidates on the list of finalists “who were less qualified than other meritorious candidates who would have made it along had it not been for these phone calls” from OCP.⁴²²

569. In the Lucy Ligotti episode, for example, Ellen Slaney testified that she only ranked Ligotti in the top eight because she had been identified as a preferred candidate, and pointed out for us the names of additional candidates that she would have ranked above Ligotti

⁴²² Testimony of Dianne Fasano, September 3, 2010 (Exhibit 109), at 102.

but for the rigged process. At least one of those individuals was denied the opportunity to proceed to the final round interview due to the rigged process:

Q. Looking at your list of ranked candidates, were there candidates on that list that you would have ranked higher than Lucille Ligotti is not for the fact that you had received her name from the Commissioner's office prior to the interviews?

A. I would say yes.

Q. Who would you have ranked higher?

A. Maybe Sean Houghton.

Q. So is it your recollection today that you only put Lucille Ligotti number eight because you had been asked to get her in the top eight by the Commissioner's office and, otherwise, she would have dropped off the top eight and Sean Houghton might have appeared on it?

A. Yes. I think there might have been others, too, maybe Mike Borden, Harry Terrien. These are people whose work I was familiar with, some of them from other courts.

Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 52-53.

570. Slaney testified that in the same time period she also put a favored candidate, Jean Roche, ahead of Sean Houghton in a second round of interviews, this for Bristol Juvenile court.⁴²³

571. Deputy Commissioner Lucci agreed that there were probably instances in which he passed someone through to the next round of interviews who probably did not deserve it, which necessarily means that someone who deserved the interview spot was denied it.⁴²⁴

⁴²³ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 77.

⁴²⁴ Testimony of Paul Lucci, August 23, 2010 (Exhibit 114), at 81-82.

572. Inflating the scores of preferred candidates in the final round interviews inevitably resulted in more qualified candidates being denied the opportunity to be hired into Probation or promoted within Probation.

573. Deputy Commissioner Burke agreed that the net effect of the system of identifying preferred candidates was that, in some cases, less qualified individuals were hired or promoted over more qualified candidates:

Q. Well, you know that some people who are less qualified than other candidates got jobs because the Commissioner wanted them to get jobs, isn't that correct?

A. I'd say yeah, yes.

Q. And you were part of that process sometimes, isn't that correct?

A. Well, as part of it, I interviewed the people, moved people on, yeah.

Testimony of William Burke, July 22, 2010 (Exhibit 96), at 75.

574. Regional Supervisor O'Neil provided similar testimony, stating "I want to say in 2005, '06, people with external influences started to get positions that I thought were not as qualified or inferior candidates."⁴²⁵

B. Unfairness to Politically-Connected Candidates

575. While the rigged hiring process is unfair to more qualified candidates, it is also worth noting that the process is in some sense unfair to candidates with political backing as well.

576. Hiring and promotion decisions will always be to some extent subjective. In some cases Independent Counsel heard from witnesses, even those opposed to the rigged hiring and promotion process, that certain favored candidates were the best candidates for their

⁴²⁵ Testimony of Richard O'Neil, August 3, 2010 (Exhibit 124), at 77.

positions. In many other cases it may be a “close call” between politically and non-politically connected candidates.

577. Ellen Slaney, who was generally critical of the rigged hiring and promotion process and suffered retaliation for her failure to always comply with it, nonetheless testified that on one occasion (involving hiring for Dedham District Court) her receipt of names did not alter the composition of the final list, as the preferred candidates were among the most qualified anyway.⁴²⁶ On another occasion, Slaney felt that four of the five candidates singled out prior to the interviews as preferred candidates deserved to make the list of finalists on their own merits.⁴²⁷ With respect to Joseph Dooley, she thought he was the second-best candidate, and another person whose name she received for a position in the Bristol Superior Court – Mary Santos for an assistant chief probation officer position – she considered the most qualified.⁴²⁸

578. As seen in the *Globe* Spotlight story, the rigged hiring process has cast a shadow over all politically-connected candidates within the Department, even in those instances (for example, Mark Prisco and Arthur Sousa) where the facts suggest that no preferential treatment resulted.

579. The many accomplishments, in some cases life work, of many individuals with political connections have been called into question, in at least some cases undeservedly. This is part of the collateral damage wrought by the Commissioner’s rigging of the Department’s hiring and promotion process.

⁴²⁶ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 41-42.

⁴²⁷ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 43-44.

⁴²⁸ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 116, 133.

C. Hiring of Problematic Candidates

580. Many sponsored candidates were demonstrably unqualified for employment or have been disciplined, fired or forced to resign because of poor work performance and other improper behavior.

1. Douglas MacLean

581. Douglas MacLean was a sponsored candidate whose name was given to several interview panels until he was ultimately hired as a probation officer. MacLean is a glaring example of a candidate who was a “Commissioner’s Choice,” but ultimately failed as a probation officer.

582. MacLean is the son of former Senator William “Biff” MacLean. MacLean had a lengthy criminal record at the time he began applying for probation positions in 2000. MacLean’s criminal history stretches back to 1983, beginning with charges such as shoplifting and possession of a hypodermic needle, followed by a charge of possession of heroin in 1986. In 1993, MacLean was found guilty possession of cocaine and conspiracy to violate the controlled substances act (which is a felony). In 1994, MacLean was convicted of three counts of violations of the Abuse Prevention Act and one count of Assault and Battery, was placed on probation, violated probation and was sentenced to 6 months of committed time. These convictions should have appeared in a criminal background check when MacLean applied for Probation Department positions.

583. After a jury trial in 1994, MacLean was found guilty of possession with intent to distribute heroin, possession of clonazepam, possession of heroin, two counts of conspiracy to violate the controlled substances act, and two counts of possession of a hypodermic needle. MacLean was sentenced to, in total, an 18 month split sentence with nine months committed and

the remainder suspended. MacLean's record, however shows that a new trial was held on all of these offenses in 1996 and in 2000 all of the charges were dismissed. It is unclear whether MacLean ever served the time he was sentenced to.

584. MacLean's record demonstrates that he should have been disqualified from any position in the Trial Court. The *Policy and Procedures Manual* states that a person who has been convicted of a felony may not be appointed to a position within the Trial Court. See *Policy and Procedures Manual*, Section 4.000.

585. Independent Counsel was unable to obtain MacLean's applications from the 2000 period when he interviewed with Slaney and Dalton. In his 2004 job application for a temporary probation officer position, MacLean indicated that he had been convicted of a crime.⁴²⁹ It was widely known that MacLean had a criminal record and a drug problem.⁴³⁰

586. Despite this fact, in 2000 MacLean's name was given on separate occasions to Regional Supervisors Ellen Slaney and Brian Murphy as a "Commissioner's Choice" candidate. Slaney refused to advance MacLean to the next round because of his criminal record and was reprimanded by the Commissioner for her actions. Murphy, on the other hand, thought MacLean interviewed well and did put him on the list of candidates for a final round interview. MacLean did not receive a Probation Department position at that time.

587. James Casey, Chief Probation Officer for the Bristol County Probate and Family Court, testified that Frank Campbell gave him MacLean's name as a candidate the Commissioner was interested in during an interview in 2003 or 2004. Casey was upset at the time because he

⁴²⁹ A copy of the application accompanies this Report as Exhibit 62.

⁴³⁰ Testimony of Mark Montigny, October 26, 2010 (Exhibit 119), at 108-109; Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 117-19.

knew MacLean had a “serious drug problem.”⁴³¹ Casey testified that sometime prior to that interview, MacLean showed up to an event at the New Bedford Probate Court.

Without any permission, Mr. MacLean came over to our court and after the ceremony, sat in the courtroom, listened to it and when Commissioner O’Brien went to go downstairs for lunch, we had a luncheon in the basement. Mr. MacLean pursued him aggressively and I was privy to the whole conversation, and at that time he was basically saying to him, you know, I can do this job. You know, I’ve rehabbed myself. What I know -- He wanted to go into criminal court.

* * *

He followed the Commissioner downstairs to lunch, was persistent and finally Liz Tavares said to me, “Jim, can you get him off the Commissioner?” And I said, “look, Doug, you’re making a fool of yourself now. Please back off now. You’ve made your point,” and when there was some separation, he was all polite. Commissioner looked at Doug and said, “you’ll never be a probation officer as long as I’m the Commissioner of Probation, Doug,” and we went in and he left. Now, I heard that myself.

Testimony of James Casey, October 5, 2010, at 46-49.

588. After this exchange, in October 2004, MacLean was appointed by O’Brien to a temporary probation officer position, a position that was not posted and for which no interviews were held. Casey testified that he was simply informed one day by Janet Mucci that MacLean was going to be assigned to his office as a temporary probation officer.⁴³² Casey told us that he was “livid” and “physically upset” about the situation. He knew of MacLean’s criminal history and drug problem and did not want him in his court.⁴³³ Furthermore, at the time, MacLean was engaged to Casey’s administrative assistant and Casey felt this could cause problems.

Regardless, MacLean was given the position.

⁴³¹ Testimony of James Casey, October 5, 2010 (Exhibit 100), at 45-46. Relevant excerpts of the testimony of Chief Probation Officer Casey accompany this Report as Exhibit 100.

⁴³² Testimony of James Casey, October 5, 2010 (Exhibit 100), at 50-51.

589. One year later, a permanent probation officer position was posted for the Bristol County Probate and Family Court. Rick O’Neil testified that he was given MacLean’s name as a favored candidate during the interview process.⁴³⁴ O’Neil testified, and Casey confirmed, that O’Neil gave MacLean’s name to both the chief probation officer and the judge prior to interviewing.⁴³⁵ Casey testified that he was informed by O’Neil that MacLean was required to make it into the top ten listing of candidates that went to the Commissioner because he was already serving as a probation officer in an acting capacity.⁴³⁶ MacLean was ranked in the middle of the pack by the regional interview panel. Casey testified that MacLean performed well at the interview.⁴³⁷

590. Casey testified that he spoke to Commissioner O’Brien after MacLean was appointed, and O’Brien admitted that MacLean was only appointed due to “tremendous pressure from the legislature”:

Q. What was your understanding as to why Mr. MacLean was hired?

A. Tremendous amount of, my understanding, basically I was never privy to anything or any discussions or any knowledge of anything, but my understanding is it was political pressure.

* * *

Q. ...Who did you talk to?

A. One person.

Q. Who was that?

⁴³³ Testimony of James Casey, October 5, 2010 (Exhibit 100), at 46-52.

⁴³⁴ Testimony of Richard O’Neil, August 3, 2010 (Exhibit 124), at 130-31.

⁴³⁵ Testimony of Richard O’Neil, August 3, 2010 (Exhibit 124), at 133; Testimony of James Casey, October 5, 2010 (Exhibit 100), at 62-63.

⁴³⁶ Testimony of James Casey, October 5, 2010 (Exhibit 100), at 55-56.

⁴³⁷ Testimony of James Casey, October 5, 2010 (Exhibit 100), at 59-60.

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- A. Commissioner O'Brien.
- Q. Recall for me, if you can, when you spoke with him and the substance of that conversation.
- A. It was sometime after the dust had settled. I can't give you an exact date. It probably happened when we had these annual conferences in November and I had a chance to talk to him alone personally, and I just brought it up and I, you know, I was there. I said "why, what happened?" He just said, quote, "I had tremendous pressure from the Legislature."
- Q. Commissioner O'Brien personally told you in response to you asking him why Mr. MacLean was hired that it was a result of political pressure from the legislature?
- A. I'm again paraphrasing it. He never used any names. I just said -- He knew I was upset and he knew that I had a good rapport with him and a good relationship with him and it always worked well with him and I just, you know, what the hell? I was there. I heard it. Probably never would have asked the question or questioned him in his superior position unless I had a basis for it. The basis was that I had heard him. So I asked him and he, he said "tremendous pressure from the legislature."

Testimony of James Casey, October 5, 2010 (Exhibit 100), at 86-88.

591. The records sent to Chief Justice Mulligan for the appointment of MacLean in 2004 and 2005 indicated that a criminal record check was completed and MacLean's appointment was in compliance with the Trial Court's *Personnel Policies and Procedures Manual*.⁴³⁸ This appears to be untrue.

592. According to O'Neil, it was clear from the outset that MacLean was not cut out to be a probation officer. O'Neil described MacLean as follows:

...he had a criminal record. He served time in jail. And his background and skill set, let's say, I didn't think they were a particularly good match for the Probate Court. He had very limited writing abilities, very limited negotiating or very limited

⁴³⁸ An excerpt of the relevant record accompanies this Report as Exhibit 63.

experience doing any kind of negotiations. So I didn't think he was very good match for the job, in addition to his history.

Testimony of Richard O'Neil, August 3, 2010 (Exhibit 124), at 132.

593. MacLean's Probation career was marked by disciplinary actions. On two separate occasions MacLean was disciplined for inappropriate conduct. In March 2006, he was reprimanded for improper behavior towards a woman whom MacLean had worked with during a mediation. According to the reprimand letter, MacLean conducted a mediation conference between a woman and her ex-husband. MacLean is reported to have contacted the woman the following day at her work to have a personal conversation with her. The woman "took exception" to MacLean's call and informed her fiancé. Her fiancé was angry and went to the Fall River courthouse to see MacLean. There was a heated exchange between the two men. The fiancé reported to Casey that MacLean did not deny contacting the woman but stated he didn't realize she was engaged to be married. MacLean admitted to contacting the woman to Chief Probation Officer Casey.⁴³⁹

594. MacLean was reprimanded for violating the woman's privacy in obtaining her contact information through his position as a probation officer and subsequently using it for personal purposes. In Chief Probation Officer Casey's reprimand letter he stated that the fiancé expressed concern that the incident was going to be "swept under the rug" because MacLean's father was a former state senator. Casey did, however, issue the formal letter of reprimand and characterized MacLean's actions as "impulsive, immature and degrading to your co-workers and the traditions of the department."

595. MacLean was again reprimanded in October 2007. Casey testified that around this time, MacLean's performance rapidly deteriorated. MacLean started calling in sick

frequently, and he “disappeared” from the courthouse.⁴⁴⁰ According to the October 2007 letter of reprimand, Assistant Chief Probation Officer Carl Cruz reported that on October 4, 2007 MacLean requested to leave work for personal reasons but stated he would return. MacLean never returned to work that day, although he contended he left word with support staff that he was not coming back. The staff had no recollection of any communication from MacLean. Chief Probation Officer Casey concluded that MacLean’s statements were “untrue and therefore unacceptable.”

596. The reprimand addressed another incident occurring on October 9, 2007, in which MacLean failed to show up for work and did not notify anyone that he was not coming in. When finally reached, MacLean claimed he was “ill and overslept.” Chief Probation Officer Casey described MacLean’s conduct as “[t]otally unacceptable, unprofessional, and inconsiderate of [his] co-workers who have been crippled by our loss of work power.”⁴⁴¹

597. Casey had become frustrated with MacLean and his actions. In concluding the reprimand letter, Casey wrote, “I am baffled and angry at these [latest] violations of the work code we hold to in this department. Your behavior is intolerable, your attitude is blatantly ambivalent, and I am unable to reconcile these factors in considering what tact I will take after discussion with the Office of these Commissioner of Probation. Please consider these matters open and yourself subject to further disciplinary action.”

598. Following these incidents, in December 2007 and January 2008, the assistant chief probation officer of MacLean’s court, Carl Cruz, informed Casey that he had significant concerns about MacLean due to incidents in which MacLean had not been fit for court duty. On

⁴³⁹ A copy of the March 7, 2006 Reprimand Letter accompanies this Report as Exhibit 64.

⁴⁴⁰ Testimony of James Casey, October 5, 2010 (Exhibit 100), at 91-94.

⁴⁴¹ A copy of the October 9, 2007 Reprimand Letter accompanies this Report as Exhibit 65.

December 31, 2007, another probation officer, Sheila Lopes, found MacLean asleep at his desk after he had not performed a requested assignment in a timely manner. When she called to wake him, he did not respond and awoke after she approached him and shook him. Lopes informed Cruz of the situation. He arrived to find MacLean sitting at his desk, unshaven, with no tie and shoes untied. He sent MacLean home but had Lopes drive him because he did not feel he was a fit to drive, a concern the judge covering the court, Judge Nesi, shared. On January 2, 2008 MacLean did not show up for work and called in later that morning to report he was ill.⁴⁴²

599. On January 13, 2008, MacLean checked into the Hazeldon Foundation in Minnesota for the treatment of chemical dependency, and on February 29, 2009, he resigned from the Department.⁴⁴³ Just prior to his resignation, MacLean was arrested for possession of a class B substance; the charge was dismissed.

2. *Patrick Lawton*

600. Patrick Lawton was also a favored candidate of the Commissioner who did not succeed as a probation officer. Lawton's family has significant political and community connections in Plymouth County. Lawton's father was a judge and other family members held various other political positions.⁴⁴⁴ Lawton indicated on his application that he was related to "Judge Mark E. Lawton, Suffolk Juvenile Court → Father; Judge James R. Lawton (Retired), First Justice, Plymouth County Probate and Family Court." Lawton received a letter of recommendation from Representative David L. Flynn.⁴⁴⁵

⁴⁴² Memorandum from Carl Cruz to James Casey dated January 9, 2008, a copy of which accompanies this Report as Exhibit 66; Testimony of James Casey, October 5, 2010 (Exhibit 100), at 98-99.

⁴⁴³ Letter from Chief Justice Mulligan to Douglas MacLean, dated February 8, 2008; Letter from Douglas MacLean to James Casey dated February 28, 2008. Copies of these letters accompany this Report as Exhibits 67 and 68, respectively.

⁴⁴⁴ Testimony of Michael LaFrance, September 29, 2010 (Exhibit 113), at 46-47.

⁴⁴⁵ A copy of the letter from Representative Flynn accompanies this Report as Exhibit 73.

601. Lawton interviewed for a position in the Plymouth Probate and Family Court in 2008. Regional Supervisor Campbell testified that he was given Lawton's name as a favored candidate by Deputy Commissioner Wall. Chief Probation Officer Michael LaFrance testified that Campbell gave him Lawton's name during the interview process as a candidate that the Commissioner's office was "interested in."⁴⁴⁶

602. Prior to applying for a position in the Probation Department, Lawton had been an Assistant District Attorney in Norfolk County. According to LaFrance, Lawton was fired from that position for using his work computer to send politically related emails in violation of Trial Court policy, an incident that LaFrance said was widely known in the community.⁴⁴⁷ LaFrance testified that neither he nor the judge on the local interview panel wanted Lawton to be placed in their Court after he had been asked to leave the District Attorney's office.⁴⁴⁸ Lawton also had a rumored history of drug abuse.⁴⁴⁹

603. LaFrance stated that after the list of finalists had been compiled based on the rankings of Campbell, LaFrance and Judge Sabatis, Lawton was ranked ninth and thus did not make the list of finalists (Campbell had ranked him third, while LaFrance ranked him tenth and Sabatis ranked him eleventh). LaFrance testified that at this point, Campbell stepped out of the room and made a phone call, he believes to Deputy Commissioner Wall.⁴⁵⁰

⁴⁴⁶ Testimony of Francis Campbell, August 19, 2010 (Exhibit 98), at 116-17; Testimony of Michael LaFrance, September 29, 2010 (Exhibit 113), at 48.

⁴⁴⁷ Testimony of Michael LaFrance, September 29, 2010 (Exhibit 113), at 49-50.

⁴⁴⁸ Testimony of Michael LaFrance, September 29, 2010 (Exhibit 113), at 121-22.

⁴⁴⁹ Testimony of Michael LaFrance, September 29, 2010 (Exhibit 113), at 51.

⁴⁵⁰ Testimony of Michael LaFrance, September 29, 2010 (Exhibit 113), at 51-55.

604. According to LaFrance, Wall called LaFrance directly. Wall informed LaFrance that the Commissioner's office was interested in Lawton, and, although LaFrance explained his concerns to Wall, told LaFrance that OCP's position was unchanged.⁴⁵¹

605. LaFrance testified that after his conversation with Wall, there may have been a further conversation between Wall and Campbell before Campbell returned to the interview room. After returning, Campbell suggested expanding the list to a larger number of candidates because there were multiple positions available and more than eight candidates could be advanced to the next round.⁴⁵² While LaFrance still did not agree with the decision and opposed Lawton as a finalist, he and the judge acquiesced and added Lawton and one other individual to the list.⁴⁵³

606. Campbell offered a different version of events. He acknowledged that he was given Lawton's name in advance of the interview process, but that he only contacted First Deputy Commissioner Tavares to ask how many positions were open and hence the number of finalists who could be named.⁴⁵⁴ Regardless, Campbell confirmed that Lawton was a favored candidate, and the scoring sheets confirm that LaFrance and the judge scored Lawton far lower than did Campbell.

607. Lawton went on to the final round interview and, at that round, was ranked first by the final interview panel consisting of Fran Wall and Edward McDermott. Consequently he obtained a probation officer position, to which he was appointed on May 30, 2008 and began work on June 2, 2008.

⁴⁵¹ Testimony of Michael LaFrance, September 29, 2010 (Exhibit 113), at 54-56.

⁴⁵² Testimony of Michael LaFrance, September 29, 2010 (Exhibit 113), at 45-46, 56-58.

⁴⁵³ Testimony of Michael LaFrance, September 29, 2010 (Exhibit 113), at 56-58.

⁴⁵⁴ Testimony of Francis Campbell, August 19, 2010 (Exhibit 98), at 143.

608. Lawton did not hold the position for long. He was placed on paid leave in May 2010 after being arrested for conspiracy to violate the drug laws and possession of class B, C and E controlled substances. Lawton remains on paid leave.⁴⁵⁵

3. James Rush

609. James Rush was a sponsored candidate who created significant issues in the court to which he was assigned. Ultimately, Rush's behavior resulted in two female employees filing a sexual and racial discrimination lawsuit.

610. James Rush is the father of state Representative Michael Rush. The *Boston Globe* reported that James Rush was appointed by O'Brien as a "favor" to then-Speaker Finneran "who said he sought the promotion for James J. Rush as a 'capstone' to the man's 41 year probation career." The *Globe* went on to allege:

The top judge in West Roxbury warned O'Brien that Rush was not up to the task, and his two-year career tenure turned out to be a fiasco. Rush clashed with five female employees who alleged that he threw tantrums, tossed papers at them, and slammed the door in one woman's face. He abruptly retired in September 2006, leaving behind a sex and race discrimination lawsuit filed by two of the women, but taking home a boost in pension thanks to his late-career appointment.

611. The *Globe's* allegations were generally confirmed by the evidence. Tavares testified that the Commissioner's office received a sponsorship for James Rush from his son, Representative Michael Rush.⁴⁵⁶ The Sponsor Lists maintained by Maria Walsh also reflect that Finneran and Representative Eugene Flaherty recommended James Rush.

612. Rush interviewed for the chief probation officer position in December 2004. Regional Supervisor McHale and Deputy Commissioner Wall were on the local interview panel.

⁴⁵⁵ The Letter from Antoinette Rodney to Patrick Lawton, May 14, 2010 accompanies this Report as Exhibit 74.

⁴⁵⁶ Testimony of Elizabeth Tavares, July 13, 2010 (Exhibit 137), at 117.

McHale testified that he was not given Rush's name as a recommended candidate in advance of the interviewing, but was aware that Rush's son is a Representative.⁴⁵⁷ Francis Wall invoked his Fifth Amendment and Article 12 rights so we were unable to question him concerning Rush's hiring.

613. Mchale and Wall's scoring of Rush is consistent with Rush being a "Commissioner's Choice" candidate. Mchale and Wall scored Rush significantly higher than the two judges who sat on the interview panel and who had worked with Rush in the past. Indeed, Rush received the highest scores of any candidate from Mchale and Wall (a 90 and a 95, respectively), while the judges both scored him below the 80 points necessary for him to advance to the next round of interviewing. Mchale offered no explanation for the discrepancy in the scoring.⁴⁵⁸

614. Mchale testified that First Justice Kathleen Coffey expressed to him that Rush was not the best candidate for the job.⁴⁵⁹ First Justice Coffey was concerned about Rush's ability to be chief, his work ethic, his lack of innovation and his lack of a strong belief in community supervision. She conveyed these concerns to Commissioner O'Brien.⁴⁶⁰

615. Regardless of Coffey's concerns, Rush was advanced to the final round where he was interviewed by O'Brien, Tavares and First Deputy Commissioner Cremens. Each interviewer awarded Rush 18 out of 20 points, making him the highest ranked candidate. Chief Justice Mulligan approved Rush's appointment as Chief Probation Officer in West Roxbury District, effective December 20, 2004.

⁴⁵⁷ Testimony of Mark Mchale, July 30, 2010 (Exhibit 117), at 85.

⁴⁵⁸ Testimony of Mark Mchale, July 30, 2010 (Exhibit 117), at 96-101.

⁴⁵⁹ Testimony of Mark Mchale, July 30, 2010 (Exhibit 117), at 87-88.

⁴⁶⁰ The relevant excerpts of First Justice Coffey's testimony from the Rush civil action accompany this report as Exhibit 76. Testimony of First Justice Kathleen Coffey from Rush civil action, November 10, 2009, at 38-40.

616. In her testimony in the civil matter brought against Rush, First Justice Coffey testified that after Rush received his appointment “that’s when problems began, real troubles began.” First Justice Coffey began receiving complaints about Rush and his behavior towards the women he supervised.⁴⁶¹

617. Five women, including two assistant chief probation officers, in the West Roxbury District Court Probation Department filed a complaint against James Rush with AOTC’s Office of Affirmative Action. An Investigation Report was issued by that office on July 13, 2006.⁴⁶² The Investigation Report states that the women alleged that Rush was demeaning, hostile, sexist, racist, mistrusting and that he created a hostile work environment. Rush is alleged to have treated the women in the office differently than the men in terms of tasks assigned, flexible work hours and permitted attendance at community programs outside of the probation office. Rush is further alleged to have thrown papers at the female probation employees he supervised, to have yelled at them, and in one instance, to have closed a door in one woman’s face. Rush denied these allegations.

618. According to the Investigation Report, the women further alleged that when they complained about Rush’s behavior to Regional Supervisor McHale and First Assistant Chief Probation Officer Prisco, they felt they were being disciplined.⁴⁶³

619. The Recommendations contained in the Investigative Report suggested Rush “examine his management style” and recommended that the female assistant chief probation officers who brought the complaint receive “fair and equal treatment.” Rush received no sanctions or other discipline for his actions.

⁴⁶¹ Testimony of First Justice Kathleen Coffey from Rush civil action, November 10, 2009 (Exhibit 76), at 27-28.

⁴⁶² A copy of the July 13, 2006 Investigation Report accompanies this report as Exhibit 75.

⁴⁶³ July 13, 2006 Investigation Report (Exhibit 75).

620. First Justice Coffey testified that after the women in the West Roxbury probation office filed their complaint against Rush, he became more argumentative and uncooperative.⁴⁶⁴

621. Ultimately, on August 13, 2007, Assistant Chief Probation Officer Helen Brown and Probation Officer Crystal Young filed a civil lawsuit against Commissioner O'Brien and Rush, restating their allegations made to the Office of Affirmative Action. First Justice Coffey testified that during the pendency of the lawsuit, the influence of Rush's son, Representative Michael Rush, was felt throughout the courthouse.⁴⁶⁵ The case remains pending in Suffolk Superior Court.⁴⁶⁶ Rush, however, retired from his position as Chief Probation Officer in September 2006.

D. Detrimental Effects on Morale

622. Fraudulent hiring practices have had a serious effect on morale within the Department. The evidence demonstrates that the morale of repeatedly unsuccessful applicants for promotion was dampened by awareness that the system is rigged. The morale of persons participating on interview panels also suffered.

623. Former First Deputy Commissioner John Cremens volunteered his believe that the rigging of hiring decisions to favor certain applicants has a detrimental effect on morale:

Q. Do you think it would be inappropriate for you to let the Commissioner's indication of a particular candidate he favored influence your ranking or scoring of candidates?

A. I don't think that would be the best approach in handling hiring?

Q. Why not?

⁴⁶⁴ Testimony of First Justice Kathleen Coffey from Rush civil action, November 10, 2009 (Exhibit 76), at 33-34.

⁴⁶⁵ Testimony of First Justice Kathleen Coffey from Rush civil action, November 10, 2009 (Exhibit 76), at 58-59.

⁴⁶⁶ See *Brown, et al. v. O'Brien, et al.*, Civ. A. No. 07-3552, Suffolk Superior Court.

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A. Because I think that would send a message that wouldn't be very good to the field.

Q. What kind of message would it send?

A. You know, things aren't on the up and up?

Q. And by not on the up and up, you mean it could affect the morale of the Probation Department?

A. Right.

Q. If they thought that hiring and [promotion] decisions were fixed in some way?

A. Correct.

* * *

Q. Did you ever hear from any of the RAs that they were scoring people differently based on the fact that Commissioner O'Brien asked them to get them on the list of finalists?

A. No, I haven't heard that, no.

Q. If they were doing that, would you find that inappropriate?

A. Yes, I would think so.

Q. For the same reasons we were discussing before?

A. Discussed earlier, yeah.

* * *

Q. In your mind, was it appropriate for Commissioner O'Brien to pass down to the interview panels the names of individuals he wanted to see make the list of finalists?

A. I'd have to say no, probably, certainly not a fair system.

Testimony of John Cremens, August 6, 2010 (Exhibit 102), at 42-43, 46-47, 49.

624. Regional Supervisor Edward Rideout testified that he has seen an increased level of “frustration” among career Probation Department employees who found their advancement within the organization blocked by politically-connected candidates:

- Q. What then is the basis for your belief that there is somehow an increased frustration among the rank and file in the department?
- A. You can hear it. You can hear it. I’ve trained over thousands of probation officers in the last four, five years, people who have tried to work their best, with 25, 30 years in the system, 20 years with the system, and see somebody come in with five years or three years or no years and get an assistant chief’s job or a first assistant or maybe a chief’s job or something like that.

Testimony of Edward Rideout, August 27, 2010 (Exhibit 129), at 39.

625. Former Regional Supervisor Nicholas DeAngelis also testified that the rigged system of hiring and promotion had a detrimental effect on morale within the Probation Department.

- Q. Up until the time you retired, do you think it was the case that there was a general understanding within the Probation Department that in order to get a job you had to be politically connected?
- A. I would say that was becoming a fact.
- Q. Did that have any effect on morale or anything like that?
- A. Yes.
- Q. In what way?
- A. People were upset.
- Q. Did people communicate that to you?
- A. Not directly to me, but in a way that I would get the idea.
- Q. Well, what do you mean? Can you be more specific?

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A. I would be at a function and someone would say they were talking to somebody and they said, you know, “The system is becoming a farce. It’s not what you know, it’s who you know.”

Q. And do you believe that the interview process that you described where names were given in advance contributed to that?

A. I would say that had a lot to do with it.

Testimony of Nicholas DeAngelis, August 24, 2010 (Exhibit 104), at 65-66.

626. Regional Supervisor Slaney testified that many chief probation officers had expressed concerns about the system to her, highlighting in particular the unfairness to long-serving Department personnel who never got a fair chance at advancement:

Their concern was that people who did a good job for them locally in their court were not going to have an opportunity to be promoted, and they wanted to recognize those people and were concerned that these names meant that they would not have that opportunity, that they were going to be -- that there would be a preselected person sometimes from the outside, sometimes from within that they did not agree would be the best candidate, and they would end up with them, if that makes sense.

Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 95.

627. Chief Probation Officer Prisco testified that he had heard “grumblings” among employees in Probation that political backing is necessary to obtain promotions, although he testified that he also heard such “grumblings” when working in other branches of state government.⁴⁶⁷

628. The former president of the probation officers’ union, John Alicandro, testified that morale in the Department was extremely low and that individuals did not bother applying for

⁴⁶⁷ Testimony of Mark Prisco, September 24, 2010, at 45-47.

promotions because they believed the position was already set aside for someone with political connections:

Q. So in your experience such instances suggested that those individuals scoring higher and obtaining the position were somehow preselected or favored by the commissioner's office?

A. Correct. That's the general feeling throughout the service.

Q. What is the basis of that feeling and your statements?

A. A lot of people, in speaking with them, a lot of members would not even bother applying for positions, for promotional positions because they felt that that position already had a name on it. It was commonly discussed that in order to get either a job at the onset or a promotion that three calls had to be made to the commissioner from usually political type people, either legislators, either reps or senators. Although when judges' offspring would apply, frequently they would say we don't even have a chance because judge so and so's kid is applying. But it was primarily the political aspect of it.

* * *

Q. You are stating that over the years there was a belief among the rank and file of the service that unless calls were made on your behalf you were unlikely to get a job and, thus, there were members of your union who, recognizing that situation, began themselves calling legislators so calls would start getting made on their behalf so they could perhaps get jobs?

A. Correct.

Testimony of John Alicandro, October 1, 2010 (Exhibit 93), at 25-26, 27; *see also id.* at 77-78, 147.

629. Even beyond the effect on morale of lower-level employees who were applying for promotions within the system, the hiring system has had a severely negative impact on the morale of more senior employees called upon to implement it. Numerous witnesses expressed their disagreement with what they commonly viewed as an inappropriate and unfair system, and

stated that they only complied with it out of fear of retaliation or because, in their mind, they had no right to question it. Several witnesses were reduced to tears recalling their involvement with rigging hiring decisions. No system that puts such pressure on its professionals, most of whom have dedicated the majority of their professional careers to the Department, should be tolerated.

630. The view among interviewers that the system was inappropriate was widespread.

As one example, regional supervisor McHale, explained:

Q. ... you viewed putting someone through to the next round who didn't actually make the top eight on their own merits as inappropriate, right?

A. I'd want the best, you know, candidate to leave and go to the next level, you know. I've been in the field for 32 years. I know when somebody comes in and do an interview with them, in looking at their resume and getting out of them for a 15-minute, 20-minute interview, that I think that this person is going to help the Probation Department and bring us to another level and help us out in the field, you know, this and that. And that's the way I looked at it, sir.

Q. And it would be inappropriate to pass over someone who would make the top eight, based on their merits and the interviews, it would be inappropriate to pass them over in favor of somebody else just because that person's name was passed to you before the interview with no explanation of why it was being given to you, right?

A. Yes.

Testimony of Mark McHale, July 30, 2010 (Exhibit 117), at 83-84.

631. Deputy Commissioner Bocko likewise agreed that the rigging of hiring and promotions bothered him because he thinks "the job should be offered on a level playing

field.”⁴⁶⁸ Regional Supervisor Fasano stated that the rigging of interviews made her “uncomfortable.”⁴⁶⁹

632. Several witnesses were clearly ashamed of their role in the rigged hiring process. Regional Supervisor Dalton was emotional during his interview recalling the incident in which he was asked to blackball two candidates in favor of the preferred candidates.

633. McDermott testified that he repeatedly expressed his uneasiness with this process to the deputy commissioners – in particular First Deputy Commissioner Tavares, and Deputy Commissioners Wall and Walsh – and was told by each some variation of “don’t worry about it.”⁴⁷⁰ But he was clearly worried that the process was inappropriate and unfair. He testified that he only went along with it based on fear of retaliation. Eventually, he testified, he stopped complaining because he feared “there was going to be retribution or consequences.”⁴⁷¹ Nonetheless, he agreed that he was “ashamed of the fact that, having been pushed into this, [he] in fact scored these candidates disproportionately to what they deserved.”⁴⁷²

E. Politicization of the Department

634. In addition to detrimental effects on morale, the belief that political connections were beneficial or even necessary to promotion within the Department can also lead to internal pressure being placed on Probation Department personnel to donate to politicians, particularly more powerful politicians within the legislature.

635. There is considerable evidence of such pressure. For example, as set forth above in the section on “pay for play,” testimony was obtained from one assistant chief probation

⁴⁶⁸ Testimony of Stephen Bocko, September 13, 2010 (Exhibit 94), at 64.

⁴⁶⁹ Testimony of Dianne Fasano, September 3, 2010 (Exhibit 109), at 54.

⁴⁷⁰ Testimony of Edward McDermott, August 25, 2010 (Exhibit 116), at 39-41, 50-51.

⁴⁷¹ Testimony of Edward McDermott, August 25, 2010 (Exhibit 116), at 41-42.

officer, Bernard Dow, in which he describes how, after repeated unsuccessful attempts to obtain a promotion, he donated \$1,000 to Speaker DiMasi in the hope (eventually realized) that this would net him DiMasi's sponsorship.

636. Others testified more generally about this sense within Probation. For example, Regional Supervisor Rios testified:

Q. [H]ave you heard since then any discussions or rumors that in order to get promoted or to get an initial job you should be donating to political candidates?

A. I hear that a lot from Probation Officers who feel – they feel or they think that that's the only way to get promoted and, you know, they tell me because they I'm not going to be running back, dropping a dime on them or whatever. But, you know, they feel that they have to; that's what it takes.

Q. How common do you think that believe is?

A. I think it's pretty widespread.

Testimony of Nilda Rios, August 4, 2010 (Exhibit 130), at 118-119.

F. Potential Civil Liability

637. Yet another problem with the rigged hiring system is the liability it has created for the Probation Department, particularly with respect to candidates who were denied hiring or promotion.

638. Independent Counsel has not conducted an exhaustive review of all such sources of liability. Even former Deputy Commissioner and Legal Counsel Anthony Sicuso suggested possible action by the Massachusetts Commission Against Discrimination as one source of liability, depending upon whether persons in protected classes were disadvantaged by the fraud:

⁴⁷² Testimony of Edward McDermott, August 25, 2010 (Exhibit 116), at 57.

- Q. Would you have seen any legal implications of that kind of practice occurring?
- A. What do you mean?
- Q. So there is -- you have a contract with the union governing hiring and promotions in some sense. You have the administrative office's practices and procedures manual. If you had been made aware of that practice at the time, were there any concerns that you would have about potential legal liability for the department?
- A. Of course.
- Q. I guess what I'm trying to get at what are the potential avenues of liability for the department if such practices were occurring?
- A. Depending on the situation there are possible criminal issues, possible MCAD issues depending on who was involved.

Testimony of Anthony Sicuso, September 30, 2010 (Exhibit 134), at 91-92.

639. Such liability could be realistic. Ellen Slaney testified that following the Ligotti hiring, the candidate who had been ranked first by each of the local interview panel members, Donnell Gomes, sought her advice concerning the possibility of filing a grievance. Slaney demurred and suggested Gomes speak to her union representatives.⁴⁷³ If Gomes had proof of the rigged hiring process, her decision whether to grieve and the outcome of any grievance likely would have been far different. As it is, Gomes may still have some cause of action against the Department.

640. Furthermore, it is possible that the probation officers' union may explore some action on behalf of its members who were passed over for promotion.

⁴⁷³ Testimony of Ellen Slaney, August 5, 2010 (Exhibit 135), at 97-98.

FUNDRAISING WITHIN THE DEPARTMENT

I. MASSACHUSETTS LAW PROHIBITS FUNDRAISING BY STATE EMPLOYEES OR ON STATE PROPERTY

641. Massachusetts law places (among others) two restrictions on state employees raising funds for candidates for political office. First, the law prohibits state employees from ever raising funds for candidates for political office, except under limited circumstances:

Section 13. No person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever, but this section shall not prevent such persons from being members of political organizations or committees. The soliciting or receiving of any gift, payment, contribution, assessment, subscription or promise of money or other thing of value by a non-elected political committee organized to promote the candidacy for public office of a person so employed for compensation by the commonwealth or any county, city or town, shall not be deemed to be a direct or indirect solicitation or receipt of such contribution by such person; provided, however, that no such gift, payment, contribution, assessment, subscription or promise of money or other thing of value may be solicited or received on behalf of such a person from any person or combination of persons if such person so employed knows or has reason to know that the person or combination of persons has an interest in any particular matter in which the person so employed participates or has participated in the course of such employment or which is the subject of his official responsibility.

Any appointed officer or employee convicted of violating any provision of this section may be removed by the appointing authority without a hearing.

Violation of any provision of this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars.

M.G.L. c. 55, § 13 (Exhibit 10).

642. Second, the law prohibits fundraising by any individual, not limited to state employees, within public buildings:

Section 14. No person shall in any building or part thereof occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value for the purposes set forth in section thirteen.

Any appointed officer or employee convicted of violating any provision of this section may be removed by the appointing authority without a hearing.

Violation of any provision of this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars.

M.G.L. c. 55, § 14 (Exhibit 11).

643. These prohibitions “protect public employees from being coerced into providing political contributions or services in their employment. In addition, they protect individuals doing business with the public sector from being coerced into contributing to any political fund or rendering any political service and generally seek to separate governmental activity from political campaign activities.” MASSACHUSETTS CONTINUING LEGAL EDUCATION, INC., MASSACHUSETTS ELECTION ADMINISTRATION, CAMPAIGN FINANCE AND LOBBYING LAW part 2 § 17.1. If managers within state agencies can solicit employees for campaign contributions, it creates the appearance, if not the reality, of conditioning employment or career advancement on political activity. Such a condition violates the First Amendment and “pressures employees to pledge political allegiance to a party with which they prefer not to associate, to work for the election of political candidates they do not support, and to contribute money to be used to further policies with which they do not agree.” *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 69 (1990).

**II. COMMISSIONER O'BRIEN AND OTHERS VIOLATED MASSACHUSETTS
CAMPAIGN FINANCE LAWS REPEATEDLY**

644. Numerous witnesses testified that these important campaign finance limitations were routinely flouted by persons at the highest levels with Probation, including by Commissioner O'Brien himself.

645. Several witnesses testified that ranking officials within the Probation Department solicited attendance at fundraisers for politicians – in particular, Representative Thomas Petrolati and State Treasurer Timothy Cahill – in the cafeteria at One Ashburton Place.

646. Former First Deputy Commissioner Cremens remembered Commissioner O'Brien soliciting attendance for a Petrolati fundraiser in the One Ashburton Place cafeteria, and Deputy Commissioner Wall collecting money from Department personnel for their tickets:

Q. Do you recall anyone in the Probation Department soliciting contributions for political candidates in the office?

A. I know that at lunch one day somebody said that there was going to be a party for Tommy Petrolati, and I know there was another for Cahill that somebody said there was going to be a party.

* * *

Q. There's a cafeteria at One Ashburton Place, and you recall someone saying during lunch at the cafeteria in the building, oh, there's going to be a party for this candidate tonight.

A. Right.

* * *

Q. Do you recall who was the person who mentioned the Tommy Petrolati event?

A. It may have been the Commissioner once. I think it was somebody else the other time. I'm not sure whether they went two or three times.

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* * *

- Q. So you remember – do you have a firm memory of Commissioner O'Brien doing that?
- A. I remember Commissioner O'Brien saying on one occasion, there's going to be a party, at someone's table, for Tommy Petrolati. I said, oh, no I'll go, no problem.

* * *

- Q. Was the goal to get a bunch of Probation Officers together to all go as a group or –
- A. Well, I know that in my situation I gave my money to Frannie Wall who was going to get the tickets for us
- Q. Who is this for, Petrolati?
- A. Petrolati.

Testimony of John Cremens, August 6, 2010 (Exhibit 102), at 86-89.

647. Regional Supervisor Edward Rideout tied the timing of at least one Petrolati fundraiser for which the attendance of Probation Department employees was solicited to the passage of legislation favorable to the Department:

- Q. You've mentioned that you have some connections with the legislature. Have you made political donations?
- A. I made one to I think it was Tom Petrolati back whenever we started ELMO. He was the guy that was running with the bill for us, and there was a group of us went out to Ludlow and I gave a check at that time. I don't think I've given many more checks to any more people, to be honest with you.
- Q. What were the circumstances -- I think you just said a bunch of you went out there. Was there some kind of internal organization or suggestion, hey, look, this guy has really stood up for us, we should go?
- A. Yeah, I think it was the inference we should go out for him at this time because we're going to get this money to start up this new electronic monitoring GPS program. Let me say this: At the time they were doing this program, I

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thought it was very important for this commonwealth to have that because we were in a bad overcrowding crisis and this was some way to get us some extra beds at a very low price. I still believe in the program. I think we should look at it. But we were just about to come on board with it, so we went up to Ludlow for one of those times up there.

* * *

Q. And I take your statement to mean that Representative Petrolati was very influential in either helping initiate --

A. Secure the money.

Q. -- or fund the program?

A. Secure the funding for the program, that's correct.

Testimony of Edward Rideout, August 27, 2010 (Exhibit 129), at 140-41, 142.

648. According to Rideout, this precise pitch – we should donate to Petrolati because he is supporting our budget – was made to him by Deputy Commissioner Wall at One Ashburton Place:

Q. Going back to the political fund-raiser for Mr. Petrolati, who was kind of the person who marshaled folks together or said, hey, we should –

A. The only one I recall -- and I only went to maybe one; I can't even recall if I went to another one; I just stopped going -- would have been Frannie Wall at the time, "We're going out to see Representative Petrolati. Why don't we all get together and go out and support him? Because he's helping us try to get the funding for the jobs, for the program."

Q. And in what context were these statements made? In other words, where, when, how?

A. I don't know. If we talked around the office, you know, "Next week, don't forget Petrolati's having his party, I think we should go out and support him. Why don't you help us out? It'll be \$100. Why don't you help us do it?" Or 75. I think it was 75 at the time. And we'd meet and try

to go out as a group and spend a couple hours and then come back home.

Q. And this was just while you were at the offices at One Ashburton?

A. Yeah. What I recall when they hit me up, say I was in one day in Ashburton Place, he might say that to me, "Don't forget next Wednesday, we're going."

Testimony of Edward Rideout, August 27, 2010 (Exhibit 129), at 144-45.

649. Regional Supervisor Jeffrey Akers similarly recalled being asked, in the cafeteria at One Ashburton Place after a staff meeting, to attend a Petrolati fundraiser. Akers testified that he was approached by Wall and informed that members of the Department were going to be attending the fundraiser and was asked if he would attend. Akers contributed \$100 or \$150 and attended the Petrolati event in Ludlow⁴⁷⁴ along with Wall, O'Brien and Burke. Akers testified that he attended the fundraiser, at least in part, because a lot of the management from the department was attending and he thought it was a good idea to go along with them.⁴⁷⁵

650. Deputy Commissioner Lucci was also asked to go to three different fundraising events for Petrolati, all of which took place out in the Western part of Massachusetts even though Lucci lives in North Reading, MA in Middlesex county. On each occasion, Wall asked Lucci if he wanted to go and collected the money for the event:

Q. What were the circumstances under which you decided to donate to Thomas Petrolati, Representative Petrolati?

A. I think I donated, I don't know exactly, but I think I donated three or four times. The guys in work were going to a fund-raiser, they thought it'd be a good idea, and I gave a check to Fran Wall, and I drove up every time with John Cremens and we went to the fund-raiser.

⁴⁷⁴ Akers does not reside in Petrolati's district in Western Massachusetts. Akers lives on the north shore in Salem. Testimony of Jeffrey Akers, August 25, 2010 (Exhibit 92), at 118.

⁴⁷⁵ Testimony of Jeffrey Akers, August 25, 2010 (Exhibit 92), at 117-127.

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* * *

- A. There's only the three I went to. I'm pretty sure three. And we went, we were asked to go, it'd be a nice time, and we drove out there and went. It was usually in the spring and I went with John Cremens.
- Q. Anybody else from the Department? You mentioned Fran Wall particularly.
- A. Fran Wall. We gave the check to Fran Wall and he'd give you a ticket or -- He was the person that, I don't know if you want to say organized it, but he's the one we would give the check to. I think I actually mailed a check because I think once you get on the list, they send it to your house. And I know in the last couple of years I haven't gone.
- Q. So, as best you can recall, these are occasions where Fran Wall said, "Hey, there's going to be a Petrolati fund-raiser, it'd be a good idea to go, could be fun"?
- A. Yes, could be fun. John and I went.

* * *

- Q. Were there typically a lot of Probation Department employees there?
- A. I'd say a fair amount, yeah.
- Q. When Fran Wall was organizing the event, did he ever mention that Petrolati was a friend of the Department?
- A. No. No, but his wife worked in ELMO.

Testimony of Paul Lucci, August 23, 2010 (Exhibit 114), at 96-98.

651. Regional Supervisor Dianne Fasano testified that she too was approached for a Petrolati fundraiser and provided money for a ticket, although she was not sure if she gave it to Wall or Lucci, who was "coordinating" the attendance of probation employees.⁴⁷⁶

⁴⁷⁶ Testimony of Dianne Fasano, September 3, 2010 (Exhibit 109), at 70-71.

652. Regional Supervisor Francine Ryan testified that she attended the Petrolati fundraiser with members of the Probation Department. Prior to the event, others within Probation asked her if she was “going to the party.”⁴⁷⁷

653. Lucci described a similar effort being made within the Department for a Cahill fundraiser, which again was organized by Wall:

- Q. On the occasion that you donated to Tim Cahill, what were the circumstances?
- A. Another time that a fund-raiser was going to be held, go there, eat and....
- Q. On this occasion was someone within the Department again organizing people going?
- A. Yeah, yeah. We gave a check.
- Q. Who was organizing that?
- A. I’m pretty sure it was Fran Wall. I’m not a hundred percent sure.
- Q. But you think it was Fran again?
- A. Yeah, I think so. He would organize golf outings; we’d go once a year. He would organize a golf outing and things of that nature.

Testimony of Paul Lucci, August 23, 2010 (Exhibit 114), at 99-100.

654. Cremens remembered attendance at a Cahill fundraiser being solicited in the One Ashburton Place cafeteria:

- Q. And then do you recall somebody else doing that for Tim Cahill?
- A. I think so. I’m not sure who is for Cahill, to be very honest. That’s a vague one.
- Q. Do you think it was Ed Ryan, do you remember?

⁴⁷⁷ Testimony of Francine Ryan, August 9, 2010 (Exhibit 132), at 138-39.

- A. It may have been Ryan; it may have been the Commissioner. I don't know who else it would be. But one of the two, probably, but I just don't remember who brought it up.

Testimony of John Cremens, August 6, 2010 (Exhibit 102), at 88.

655. Frank Campbell also remembered a discussion about attending a fundraiser for Cahill while at the lunch table following a senior staff meeting. Even though Campbell stated to those at the lunch table that he is not "politically oriented or motivated," and was unable to attend the event, he still purchased a ticket:

- Q. What you're describing, someone bringing this up at the lunch table, was it a situation where someone said, "Hey, I'm going to this Tim Cahill fund-raiser, anybody else want to go?" Was it that sort of thing?

- A. Well, I don't know if it actually happened that way. But when I say the lunch table, there was a group of us from the office on a given day, if there was a senior staff meeting for instance. ... [U]sually there'd be a big group of us and there are some that are there every day that sit at the lunch table in the state cafeteria every day. It's like the meeting spot where you talk shop or talk BC -- I didn't go to BC -- a lot of BC football. The commissioner went to BC, but I don't really follow it, BC football.

And I just kind of have a flash memory of somebody mentioning that there was a bunch of guys going to a fundraiser for Tim Cahill. And it wasn't a big deal to me, quite honestly. I made it clear to a couple of people after the fact that I probably -- And I can't recall. I don't know if I sent the check to him directly or if I had asked to get a ticket. I think they had tickets for that fund-raiser, if my memory serves.

I didn't go. It was in Quincy somewhere. But without a doubt you won't see any pictures of me there. I wasn't there. I wasn't there. I can say that with certainty. Because my life and my home was insanity at the time with my little guy.

Testimony of Francis Campbell, August 10, 2010 (Exhibit 98), at 197-99.

656. O'Neil described being asked to go to political fundraisers, though he stated that he never attended:

Q. Have you ever attended or been asked to attend political fundraisers for any candidate?

A. I've been asked to attend; I've never attended.

Q. Are there particular candidates who stand out whose fundraiser Probation Department employees used to go to?

A. Nothing that stands out. To be honest with you, I really don't like politics. I try to stay away from it completely. So I don't really engage in those kinds of discussions. If people were saying they were going to a fundraiser or something, I wouldn't even be interested in pursuing a conversation in that area.

Q. Who are these people, even though you had little interest, that mentioned various fundraisers? And I mean Probation employees.

A. I think some people in Dedham, maybe a Chief like -- Chief of Dedham District Court. The name escapes me. I've heard talks at Chiefs meetings about going to different fundraisers. I mean, nobody really comes to mind as saying, I am going to so and so's fundraising party tonight; you want to come? I mean, nobody would even engage me in a discussion like that that knows me.

Testimony of Richard O'Neil, August 3, 2010 (Exhibit 124), at 177-78.

657. Office of Community Corrections Regional Program Manager John Quinn testified that he was approached by Wall and asked to attend the Cahill fundraiser. Quinn said he did not want to attend the event, but still gave a donation check for \$100 to Wall.⁴⁷⁸

658. Independent Counsel was not able to ask Commissioner O'Brien if he raised funds for Petrolati and/or Cahill because he refused to cooperate with the investigation. He did specifically deny to the *Boston Globe* that he played any role in raising funds for Cahill. Deputy

⁴⁷⁸ Testimony of John Quinn, November 1, 2010 (Exhibit 128), at 100-103.

Commissioner Wall flatly refused to cooperate with this investigation, declining to answer any questions, including whether he collected money from Probation Department employees for attendance at political fundraisers. Edward Ryan, under oath, denied soliciting funds for Cahill, although he admitted that he did “talk up” Cahill fundraisers.⁴⁷⁹

659. Based on the testimony by numerous witnesses (many of whom are old friends of O’Brien) that O’Brien, Wall, and/or Ryan were soliciting funds for Petrolati and Cahill, Independent Counsel concludes that, at a minimum, O’Brien and Wall did so.

660. In addition to fundraising for Petrolati and Cahill, one chief probation officer testified that Senator Marc Pacheco, a friend of his, asked him on more than one occasion to solicit contributions from among his fellow Probation Department employees, and he did so:

- Q. Senator Pacheco asks you to help him sell tickets --
- A. In the past he’s asked me if I could take tickets to sell to friends.
- Q. Has he ever specifically asked you to see if anyone else in the Probation Department would be interested in attending?
- A. Yes.

Testimony of Joseph Dooley, September 17, 2010 (Exhibit 106), at 49-50.

661. Senator Pacheco denied ever asking Dooley to raise funds among Probation Department employees.⁴⁸⁰ Independent counsel concludes that the testimony of the chief probation officer, who had no motive to incriminate himself, is more credible than that of Senator Pacheco on this issue.

662. The evidence reveals a culture in the Probation Department, beginning at the top with Commissioner O’Brien and Deputy Commissioner Wall, of ignoring the important

⁴⁷⁹ Testimony of Edward Ryan, July 15, 2010 (Exhibit 131), at 256, 261-62.

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restrictions placed on fundraising by public employees and in public spaces. It is especially troubling that the hierarchy of the Department solicited employees for contributions to politicians widely thought within the Department to be influential in hiring and promotion decisions, such as Representative Petrolati. The evidence collected unambiguously points to repeated violations of the law by O'Brien, Wall, and others, violations still within the limitations period of six years applicable to such offenses.

⁴⁸⁰ Testimony of Marc Pacheco, October 20, 2010 (Exhibit 125), at 92-96.

OTHER INCIDENTS

I. THE HIRING OF O'BRIEN'S WIFE AND DAUGHTER BY THE DEPARTMENT OF THE TREASURY.

663. The *Boston Globe* reported that in July 2005, "45 probation employees – mostly senior managers – donated \$5,900 to state treasurer Cahill" and Cahill "hired [O'Brien's] wife," Laurie O'Brien, "to work in the State Lottery." The paper reported that O'Brien's daughter, Kelly O'Brien, is also employed by the Massachusetts Department of the Treasury.

664. A review of the Treasury's records confirms that Laurie O'Brien has been employed by the Massachusetts Lottery, which is a division of the Treasury, since September 21, 2005. Kelly O'Brien has been employed by the Abandoned Property Division of the Treasury since December 21, 2005.

665. Based on the evidence, Independent Counsel concludes that Commissioner O'Brien did in fact cause contributions to be solicited from Probation Department employees to Treasurer Cahill in an effort to assist his wife in obtaining a desirable position within that agency. A Probation Department employee, Edward Ryan, with childhood connections to Cahill further lobbied Treasury on Laurie O'Brien's behalf. The evidence strongly suggests, although current and former Treasury officials deny it, that these efforts by Commissioner O'Brien had the desired effect, assisting Laurie O'Brien in obtaining a position in customer service at Treasury, rather than a far less desirable position she had been offered as a night-shift computer operator.

666. Similar direct evidence has not been obtained with respect to Kelly O'Brien. However, given the timing of her employment, it is reasonable to infer that O'Brien's earlier efforts also played a role in her hiring by the same agency.

A. Laurie O'Brien

667. Independent Counsel obtained documents concerning Laurie O'Brien's hiring by the Treasury. These documents mostly consist of emails among Michael Coughlin, Director of Human Resources for the Lottery; Scott Campbell, then Director of Operations for the Treasury (and friend of Edward Ryan); and Neil Morrison, then Chief-of-Staff for Cahill. All three were regularly involved in the hiring of employees within the Treasury.

668. There was no record of Laurie O'Brien submitting a job application, and witnesses could not recall when they first received her resume. A July 1, 2005 email from, refers to Campbell and/or Morrison having "recently" forwarded Laurie O'Brien along as a candidate for a position in the Lottery.⁴⁸¹ Accordingly, sometime before that July 1, 2005 date, either Campbell or Morrison received Laurie O'Brien's resume and sent it along to Coughlin.

669. The evidence pointed to Campbell as the person who initially referred Laurie O'Brien for employment. Morrison testified that he did not receive Laurie O'Brien's resume. , A spreadsheet maintained by Assistant Director of Human Resources for the Treasury, Eileen Glovsky, to track job applicants indicates that Laurie O'Brien was referred by "Scott." Under the circumstances, that is undoubtedly a reference to Scott Campbell. Campbell testified that he does not recall referring O'Brien, but conceded it was possible.⁴⁸²

670. Coughlin testified that he interviewed Laurie O'Brien for her position at the Lottery in June 2005.⁴⁸³ His undated notes, which he testified were from that interview, are

⁴⁸¹ A copy of the July 1, 2005 email accompanies this Report as Exhibit 80.

⁴⁸² Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 84-85; Testimony of Eileen Glovsky, October 18, 2010 (Exhibit 110), at 66-67; Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 29-30, 38-39. Relevant excerpts from the testimony of Mr. Morrison, Ms. Glovsky, and Mr. Campbell accompany this Report as Exhibits 120, 110, and 99, respectively. A copy of the spreadsheet maintained by Glovsky accompanies this report as Exhibit 84.

⁴⁸³ Testimony of Michael Coughlin, September 2, 2010 (Exhibit 101), at 39-40. Relevant excerpts of the testimony of Mr. Coughlin accompany this Report as Exhibit 101.

generally positive, though sparse. They state “good interview – good candidate for customer service – no to field work to start – promotions?”⁴⁸⁴

671. In the July 1, 2005 email, Coughlin indicated to Campbell and Morrison that he offered Laurie O’Brien a position as the “night shift computer operator” in the Lottery. Coughlin, Campbell and Morrison all testified that the night shift computer operator position was an undesirable one that was difficult to fill because of the overnight hours.⁴⁸⁵

672. Subsequently, there was a concerted effort within the Probation Department to help Laurie O’Brien obtain a more desirable position within the Lottery.

673. In particular, on July 6, 2005, shortly after Laurie O’Brien was offered the undesirable position of night shift computer operator, at least 34 employees of the Probation Department attended a Cahill fundraiser and donated at least \$100 each to Cahill’s campaign.⁴⁸⁶ These employees included high level Probation Department employees Jeff Akers, William Burke, Frank Campbell, Edward McDermott, Edward Ryan, Francine Ryan, Nicholas DeAngelis and Maria Walsh. The vast majority of these employees have no other history of donating to Cahill’s campaign, either prior to or after the July 6 fundraiser. Laurie O’Brien also donated \$200 to Cahill’s campaign on that day, sufficient to purchase tickets to the fundraiser for herself and the Commissioner.

674. Several of those contributing testified that there was an organized effort by senior Department management to have Probation Department employees attend the Cahill fundraiser.

⁴⁸⁴ A copy of Coughlin’s notes accompanies this Report as Exhibit 78.

⁴⁸⁵ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 56, 83-84, 88-89; Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 29-30, 32; Testimony of Michael Coughlin (Exhibit 101), September 2, 2010, at 28, 32, 45-46.

⁴⁸⁶ Information concerning these donations is available from the Massachusetts Office of Campaign Finance website.

675. As quoted above, John Cremens testified that he was informed of the fundraiser for Cahill in the lunchroom at One Ashburton Place by either Commissioner O'Brien or Edward Ryan. *See supra*, ¶ 654.

676. Paul Lucci testified that he was told about the Cahill fundraiser by Fran Wall. *See supra*, ¶ 653. Regional Supervisor Nicholas DeAngelis also testified that he was encouraged to attend the Cahill fundraiser by Wall:

Q. Do you recall kind of was one person any more than another spearheading this effort or was it just kind of a group dynamic of we're going to go to the fund-raiser?

A. I got the call from Fran Wall and I did ask if the people who I was driving to the audit with were going and when he said yes, I said I guess I'll go.

Testimony of Nicholas DeAngelis, August 24, 2010 (Exhibit 104), at 114-15.

677. Francine Ryan testified that a group of Probation Department employees from Western Massachusetts drove down together to attend the Cahill fundraiser.⁴⁸⁷ Frank Campbell also recalled being solicited for the Cahill fundraiser. *See supra*, ¶ 655.

678. Cahill received \$4000 in contributions from Probation Department employees who bought tickets to this fundraiser.

679. Around this same time and during the time when Laurie O'Brien was seeking employment from the Lottery, Edward Ryan, who encouraged Department employees to attend the Cahill fundraiser, was making calls on her behalf to Cahill's office.

680. Ryan, a family friend of Cahill, testified that, at the request of Commissioner O'Brien, he contacted Scott Campbell to recommend Laurie O'Brien.⁴⁸⁸ Ryan also testified that the Commissioner asked to him to inquire as to how Laurie O'Brien was progressing through the

⁴⁸⁷ Testimony of Francine Ryan, August 9, 2010 (Exhibit 132), at 154-56.

hiring process and he did so.⁴⁸⁹ Commissioner O'Brien was aware that Cahill had been Ryan's wrestling coach and the two were friendly.⁴⁹⁰

681. Campbell did not refute Ryan's testimony concerning his recommendation of Laurie O'Brien for a position in the Lottery; he claimed that he could not recall whether he had any conversations with Ryan concerning Laurie O'Brien's hiring within the Treasury.⁴⁹¹ Indeed, Campbell testified that he remembered next to nothing concerning Laurie O'Brien's hiring.⁴⁹² Campbell did testify, however, that if he had spoken to anyone about Laurie O'Brien's hiring, it would have been Edward Ryan.⁴⁹³

682. Neil Morrison corroborated Ryan's version of events. He testified that he was aware of Campbell's friendship with Ryan and assumed that Campbell was communicating with Ryan regarding Laurie O'Brien.⁴⁹⁴ Morrison told us that he had the impression that Campbell was approached by someone who asked him (Campbell) "to give her a hand."⁴⁹⁵ Morrison testified that he recalled both Campbell and Coughlin pushing for Laurie O'Brien to be hired, indeed, that Campbell was a "advocate" for her.⁴⁹⁶ According to Morrison, Campbell and Coughlin rarely agreed on hiring decisions, and he found it odd that they agreed in this instance and inquired more about Laurie O'Brien.⁴⁹⁷ Morrison testified that he learned "almost

⁴⁸⁸ Testimony of Edward Ryan, July 15, 2010 (Exhibit 131), at 244-46, 248.

⁴⁸⁹ Testimony of Edward Ryan, July 15, 2010 (Exhibit 131), at 249-52.

⁴⁹⁰ Testimony of Edward Ryan, July 15, 2010 (Exhibit 131), at 252.

⁴⁹¹ Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 18, 30, 43-46.

⁴⁹² Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 17-18, 26, 29-35, 39-45.

⁴⁹³ Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 43-44.

⁴⁹⁴ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 73-78, 101-102, 125.

⁴⁹⁵ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 55.

⁴⁹⁶ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 57-58, 60-62, 70-72, 128-129.

⁴⁹⁷ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 53-55.

immediately” that Laurie O’Brien was O’Brien’s wife, that Coughlin had been friendly with Laurie O’Brien for years, and that Coughlin thought “highly” of her.⁴⁹⁸

683. Morrison testified that he raised this issue with Treasurer Cahill. Cahill was initially reluctant to consider Laurie O’Brien for a position, but Coughlin and Campbell persisted in their support for her and eventually convinced Cahill that there was a vacant position and that Laurie O’Brien was well qualified to fill it.⁴⁹⁹

684. Just days after the fundraiser, on July 13, 2005, Coughlin, Campbell and Morrison once again discussed hiring Laurie O’Brien. This time, instead of a position as a night shift computer operator, she was going to be offered a position in Customer Service, prompting Campbell to enthusiastically reply “Fantastic on Laurie O’Brien.”⁵⁰⁰ Campbell, Coughlin and Morrison all testified that a position in Customer Service was more desirable and easier to fill than a night shift computer operator.⁵⁰¹ Coughlin testified that he had hundreds of candidates to choose from for this position.⁵⁰²

685. Morrison stated that he was not aware of the timing of the fundraiser, but that Campbell probably was aware of fundraising activities during this time period.⁵⁰³ He agrees that the timing of the second position offered to Laurie O’Brien and the fundraiser was poor, and that it gives the appearance that something inappropriate was happening, although he believes Laurie O’Brien was hired on the merits.⁵⁰⁴ Morrison testified that if he had known Laurie O’Brien had

⁴⁹⁸ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 52, 57-58, 60-61.

⁴⁹⁹ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 65-70, 106-108, 110-11.

⁵⁰⁰ A copy of this email accompanies this Report as Exhibit 81.

⁵⁰¹ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 91-93; Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 32; Testimony of Michael Coughlin (Exhibit 101), September 2, 2010, at 31-32.

⁵⁰² Testimony of Michael Coughlin, September 2, 2010 (Exhibit 101), at 66-67, 79-80.

⁵⁰³ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 96-101.

⁵⁰⁴ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 95-96, 99-101.

donated to Cahill's campaign while she was interviewing he would not allowed the donation to be accepted or would have had it returned.⁵⁰⁵

686. Even beyond the donations to Cahill, the hiring of Laurie O'Brien was irregular. Morrison testified that such a job offer should not have been made by the Lottery itself, because hiring was supposed to be centralized within the Treasury. He also that typically an offer letter is not sent to a candidate who has not first met with the Treasurer, and O'Brien had not done so when she received her offer.⁵⁰⁶ Morrison was clearly frustrated during his testimony that Laurie O'Brien's hiring did not follow Treasury's practices and procedures. He testified this was an ongoing problem with hiring for Lottery positions.

687. There are no further communications or documents concerning Laurie O'Brien's hiring and promotion until 2007. In an email dated June 14, 2007, Campbell wrote "I spoke with my contact regarding Laurie O'Brien and the thought of exploring any opportunities in Marketing were most exciting to her. Please let me know what your thoughts are."⁵⁰⁷ Coughlin testified that he did not know who this "contact" was, but that he thought it was "a little out of the norm" for a third party to be discussing Laurie's employment within the Lottery with Campbell.⁵⁰⁸ Campbell claimed not to remember to whom he was referring as his "contact."⁵⁰⁹ Morrison testified that the contact Campbell referred to in his email is probably Edward Ryan,⁵¹⁰ and this seems most likely.

⁵⁰⁵ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 128-129.

⁵⁰⁶ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 49-50, 110-111, 115-19.

⁵⁰⁷ A copy of this email accompanies this Report as Exhibit 82.

⁵⁰⁸ Testimony of Michael Coughlin, September 2, 2010 (Exhibit 101), at 55-57, 58-59.

⁵⁰⁹ Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 42-43.

⁵¹⁰ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 124-26.

688. Despite all of this activity around Laurie O'Brien, Coughlin testified he did not receive any direction or pressure from anyone to hire or promote her. Morrison, however, did get the impression that she received extra attention.⁵¹¹ Campbell, as in his responses to most questions, claimed to be unable to remember the circumstances surrounding her hiring.⁵¹²

689. While there is no direct evidence that Ryan's calls to Campbell or the large number of well-timed campaign contributions from Probation Department employees helped Laurie O'Brien, the circumstantial evidence leaves no doubt that Laurie O'Brien's hiring was a result of these outside influences. Because this investigation is not focused on wrongdoing outside the judicial branch, Independent Counsel did not fully investigate this issue. The Court, however, may wish to forward the information presented in this Report to relevant executive branch officials for their review.

690. More importantly for present purposes, Independent Counsel concludes that Commissioner O'Brien, either directly or through his subordinates Wall and Ryan, solicited contributions to Cahill from his employees in the Probation Department in an effort to assist his wife in obtaining a desirable position within Treasury. O'Brien also asked his subordinate, Ryan, to intervene at Treasury on his behalf. The solicitation of contributions was in violation of the law and, moreover, an abuse of O'Brien's position of authority within the Department for personal gain.

B. Kelly O'Brien

691. We were unable to obtain significant testimony or documentary evidence concerning the hiring of Kelly O'Brien. Campbell testified that he does not recall anything with

⁵¹¹ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 121-22.

⁵¹² Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 67-70; Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 34-36, 39; Testimony of Michael Coughlin, September 2, 2010 (Exhibit 101), at 41.

respect to her hiring.⁵¹³ Glovsky testified that she has no knowledge of Kelly O'Brien's hiring, but was likely on vacation at the time.⁵¹⁴ Counsel for the Treasury, Grace Lee, informed us in a telephone call that an individual named Vicki Williams likely was involved in hiring Kelly O'Brien, but that Williams was terminated from her employment with the Treasury. We subpoenaed Williams at her last known address, but were informed she moved sometime in July 2010 and have been unable to locate her at this time.

692. The Treasury has no record of a posting for the position Kelly O'Brien received, nor is there any record of her having been interviewed prior to being hired.⁵¹⁵

693. Documents produced by the Treasury provided some information with respect to Kelly O'Brien's hiring. In an email dated February 21, 2006, Glovsky and another employee of the Treasury note that she was a "surprise employee."⁵¹⁶ Interestingly, her application for employment is dated the same day as that email. (Glovsky testified this was not uncommon at the time). A compensation assessment, however, shows her date of hire as December 19, 2005.⁵¹⁷ Accordingly, it remains unclear how she was hired and under what circumstances, though this minimal information indicates that her hiring was not in the ordinary course.

694. Morrison testified that he was not involved in Kelly O'Brien's hiring (which he found to be unusual now and at the time). He learned from Campbell that she was seeking employment.⁵¹⁸ He told us that the dates on the documents related to her hiring do not make

⁵¹³ Testimony of Scott Campbell, August 31, 2010 (Exhibit 99), at 26, 45.

⁵¹⁴ Testimony of Eileen Glovsky, October 18, 2010 (Exhibit 110), at 49-50.

⁵¹⁵ Testimony of Eileen Glovsky, October 18, 2010 (Exhibit 110), at 46-47, 54-56, 66-67.

⁵¹⁶ A copy of this email accompanies this Report as Exhibit 83; Testimony of Eileen Glovsky, October 18, 2010 (Exhibit 110), at 33.

⁵¹⁷ Testimony of Eileen Glovsky, October 18, 2010 (Exhibit 110), at 38-39. A copy of Kelly O'Brien's employment application and compensation assessment accompany this report as Exhibit 79.

⁵¹⁸ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 129-35, 139-40.

sense given how hiring was supposed to work. While he does not know if there was anything improper in her hiring, he believes that ordinary hiring protocols were not followed.⁵¹⁹ He did not recall any push back on her hiring as had been the case when Laurie O'Brien initially applied for a Lottery position.⁵²⁰

695. Edward Ryan testified that he believes he contacted Scott Campbell to recommend Kelly O'Brien for a position within the Lottery at the Commissioner's request.⁵²¹ Probation Department employees, only a few months prior, had made a large number of donations to Cahill's campaign. At this time, therefore, there is evidence to indicate that her hiring may also have been driven by efforts of Probation Department employees. More importantly, the same evidence suggests that Commissioner O'Brien solicited political contributions from his employees in order to assist his daughter's hiring. Such evidence, however, is less compelling than in the case of Laurie O'Brien.

II. THE DISCIPLINING OF ASHLEY LOSAPIO

696. In providing examples of alleged instances where "politically connected employees with histories of alleged misconduct or sloppy work avoided serious career fallout," the *Boston Globe* discussed the situation of Associate Probation Officer Ashley Losapio, the daughter of First Justice Paul Losapio of the Uxbridge District Court.

697. The *Globe* reported that "Worcester police fruitlessly complained to O'Brien in 2008 that associate probation officer Ashley Losapio, the stepdaughter of a judge, had compromised an investigation by leaking information to criminals." According to the *Globe*, Ms. Losapio admitted to having contact with known criminals and informing them of people she

⁵¹⁹ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 136-41, 143-45.

⁵²⁰ Testimony of Neil Morrison, September 30, 2010 (Exhibit 120), at 129-31, 133-35.

⁵²¹ Testimony of Edward Ryan, July 15, 2010 (Exhibit 131), at 247-48.

saw come into the court where she worked. Worcester Police Officers, the *Globe* reported, informed Commissioner O'Brien that Losapio "is not a suitable person to serve this community as a probation officer" and believe she continues to associate with known criminals. The *Globe's* story concluded that while Losapio "has been transferred," "[s]he continues to work for probation, and her pay has increased by nearly \$3,000 a year." The implication of the story is that Losapio should have been terminated from Probation, and was not only because of her connections.

698. Losapio was appointed Associate Probation Officer and assigned to the Worcester Superior Court effective July 24, 2006 with a starting salary of \$33,017.00. Employee information provided by AOTC shows Losapio's current salary is \$37,518.75.

699. We spoke to members of the Worcester Police Department concerning Losapio. On June 11, 2010, we met with Deputy Superintendent Edward J. McGinn, Lt. Thomas Gaffney and Sgt. Eric Boss. They confirmed the information reported in the *Globe* with respect to Losapio's association with known criminals. They also provided us with their file concerning Losapio which included a memorandum to the chief probation officer for the Worcester Superior Court, Thomas Turco, and letter to Commissioner O'Brien that detailed Losapio's activities. Copies of this letter and memorandum were also located in Commissioner O'Brien's files.⁵²²

700. The letter detailed, and it was confirmed during the interview with Worcester Police, that Losapio has been a known associate of several drug and gun dealers who have been the subject of Worcester Police and DEA investigations.

⁵²² A copy of the memorandum from Lt. Thomas J. Gaffney to CPO Thomas Turco, dated April 4, 2008, accompanies this Report as Exhibit 85. A copy of the letter from Det. Captain Edward J. McGinn to Commissioner O'Brien, dated April 16, 2008, accompanies this Report as Exhibit 86.

701. The memorandum and letter state that through wiretaps Worcester Police intercepted discussions between these individuals recounting that they had received helpful information from “Ashley L.” According to the reports, during one conversation they discussed contacting Ashley L. to get information on their case.⁵²³ One of them stated during that conversation that “[*he*] saw Shorty in court, and that she gave him a signal where he was going to be alright.” Worcester Police know “Shorty” to be the moniker of Ashley Losapio.⁵²⁴

702. During our interview with the Worcester Police, they stated that they believe Losapio notified her criminal associates when witnesses might be testifying before the grand jury and, as a result, they appeared at the courthouse to intimidate witnesses.⁵²⁵ They also stated that Losapio used Probation Department databases to locate an individual owing money to a used car dealer, whom they believe was subsequently accosted by Losapio’s criminal associates.⁵²⁶

703. On April 4, 2008, Worcester Police met with Chief Probation Officer Turco to inform him of their investigation and desire to speak with Losapio. “It was explained [to Turco] that the targets of this investigation are very violent and have access to numerous firearms and large quantities of drugs. It was also explained that if the wrong information was given to the targets of this investigation that it could result in someone being seriously hurt or murdered.”⁵²⁷ The Worcester Police reported that Turco was helpful.⁵²⁸ During their meeting Turco called

⁵²³ A copy of the letter from Det. Captain Edward J. McGinn to Commissioner O’Brien, dated April 16, 2008, accompanies this Report as Exhibit 86.

⁵²⁴ A copy of the letter from Det. Captain Edward J. McGinn to Commissioner O’Brien, dated April 16, 2008, accompanies this Report as Exhibit 86.

⁵²⁵ Informal Interview of McGinn, Gaffney and Boss.

⁵²⁶ Informal Interview of McGinn, Gaffney and Boss.

⁵²⁷ A copy of the memorandum from Lt. Thomas J. Gaffney to CPO Thomas Turco, dated April 4, 2008, accompanies this Report as Exhibit 85.

⁵²⁸ Informal interview of McGinn, Gaffney and Boss.

Christopher Bulger, counsel for OCP, and asked that Losapio be suspended. Police described Bulger as advising them that Losapio could not be suspended without a hearing.⁵²⁹

704. Worcester Police reported that, later that same day, they interviewed Losapio. During that interview, Losapio admitted to knowing and socializing with the known criminals.⁵³⁰ She admitted that she discussed with them who she had seen in court (but reasoned it was “public” information anyway). She admitted to looking up information relating to the used car purchaser.⁵³¹ Losapio also reportedly admitted to police that she looked up the criminal histories of her associates on her work computer. The Worcester Police reported that Losapio admitted that she knew what she was doing was wrong and that she was aware of the criminal activities of the individuals with whom she associated, but reasoned that “it’s all right if it’s not around [her].”⁵³²

705. On April 9, 2010, Bulger sent a letter to Losapio concerning her interview with Worcester Police. The letter informed Losapio, “[b]ased upon preliminary information you are excluded from courtroom work and are instructed to perform limited office duties within the probation office. In addition, your Court Activity Record Information (CARI) password will be suspended, pending the outcome of this investigation.”⁵³³

706. On April 16, 2008, Deputy Commissioner Tavares sent a letter to Losapio confirming her “voluntary transfer from the Worcester Division of the Superior Court to the

⁵²⁹ Informal interview of McGinn, Gaffney and Boss.

⁵³⁰ Informal interview of McGinn, Gaffney and Boss. A copy of the memorandum from Lt. Thomas J. Gaffney to CPO Thomas Turco, dated April 4, 2008, accompanies this Report as Exhibit 85. A copy of the letter from Det. Captain Edward J. McGinn to Commissioner O’Brien, dated April 16, 2008, accompanies this Report as Exhibit 86.

⁵³¹ Informal interview with McGinn, Gaffney and Boss.

⁵³² Informal interview with McGinn, Gaffney and Boss.

⁵³³ A copy of the April 9, 2010 letter from Bulger to Losapio accompanies this Report as Exhibit 87.

Westborough Division of the District Court Department effective April 16, 2008. You shall remain at the Westborough District Court pending the outcome of your investigatory review.”⁵³⁴

707. On April 25, 2008, Nicole Pangonis, Deputy Legal Counsel for OCP, informed Losapio via letter that she was placed on administrative leave with pay as of that date.⁵³⁵ The letter also reminded Losapio that her investigatory review was scheduled for April 30, 2008.⁵³⁶

708. On May 27, 2008, Bulger transmitted to Michael Manning of NAGE the “agreed upon discipline in the Ashley Losapio matter.”⁵³⁷ That letter attached the findings from Losapio’s investigatory review, in which Losapio confirmed the information she told police.⁵³⁸ The findings concluded that Losapio acknowledged her wrongdoing, was cooperative in both the OCP and police investigations, accepted responsibility for her actions, “appeared to be genuinely contrite,” and “[c]onsistent with the objectives of the Trial Court’s progressive discipline policy, Ms. Losapio ... expressed a willingness to conform to the high standard of conduct expected of an Associate Probation Officer.”⁵³⁹ The findings also noted that Losapio had no other disciplinary action in her employment record.⁵⁴⁰

709. Based on those findings, the following disciplinary actions were taken against Losapio: (1) two week suspension (one week without pay, one week deducted from accumulated vacation time)⁵⁴¹; (2) permanent assignment to the Westborough Division of the District Court Department; and (3) her “CARI password, which is presently suspended, shall be reinstated upon

⁵³⁴ A copy of the April 16, 2008 letter from Tavares to Losapio accompanies this Report as Exhibit 88.

⁵³⁵ A copy of the April 25, 2008 letter from Pangonis to Losapio accompanies this Report as Exhibit 89.

⁵³⁶ April 25, 2008 letter from Pangonis (Exhibit 89).

⁵³⁷ A copy of the May 27, 2008 letter and disciplinary findings accompanies this Report as Exhibit 90.

⁵³⁸ May 27, 2008 letter and disciplinary findings (Exhibit 90).

⁵³⁹ May 27, 2008 letter and disciplinary findings (Exhibit 90).

⁵⁴⁰ May 27, 2008 letter and disciplinary findings (Exhibit 90).

the recommendation of the supervising chief probation officer. Thereafter, the chief probation officer shall have the discretion to restrict and/or monitor Ashley Losapio's use of the CARI system as deemed necessary."⁵⁴² Losapio accepted and agreed to both the findings and the discipline.⁵⁴³

710. Worcester police informed Independent Counsel that they have never heard back from the Commissioner's office regarding Losapio, but they believe that she is still socializing with the individuals involved in criminal activity. The provided us with Facebook screen shots showing photos of Losapio associating with those individuals.⁵⁴⁴

711. Legal Counsel for the Probation Department, Christopher Bulger, testified that he believed the punishment Losapio received was commensurate with her actions. Bulger told us that it is difficult to maintain a termination of a union employee such as Losapio. While in this instance she was suspended from work, per the Trial Court's progressive discipline policy, if she incurred another violation then there would be more solid grounds for termination.⁵⁴⁵

712. On the basis of the available evidence, Independent Counsel concludes that termination of Losapio was certainly justified. It is inconceivable that a responsible private sector company would continue the employment of an employee who knowingly used company computers to assist her criminal friends. It must therefore be even more unreasonable for an employee of a public safety and law enforcement agency to remain employed under such circumstances, particularly where there is no indication that she has terminated her affiliation with a known criminal element. Independent Counsel is also concerned by the failure of Legal

⁵⁴¹ Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 135-36.

⁵⁴² May 27, 2008 letter and disciplinary findings (Exhibit 90).

⁵⁴³ May 27, 2008 letter and disciplinary findings (Exhibit 90).

⁵⁴⁴ Informal interview with McGinn, Gaffney and Boss.

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Counsel for Probation, Christopher Bulger, to have made subsequent inquiry of Losapio or her superiors regarding her compliance with the terms of her discipline. Nonetheless, Independent Counsel acknowledges that, as Bulger testified, union issues, and the discipline imposed in other situations, may have tied Probation's hands. These questions warrant further investigation which was beyond the resources and timeframe of this investigation..

⁵⁴⁵ Testimony of Christopher Bulger, October 13, 2010 (Exhibit 95), at 131, 136.

FOLLOW-UP AND OUTSTANDING ITEMS

While Independent Counsel undertook to complete a comprehensive investigation, due to time and resource constraints there are discrete areas that remain outstanding and that should be completed.

713. On Tuesday, November 2, 2010, Manager of Intergovernmental Affairs Maria Walsh produced a folder labeled “1998” which contained additional Sponsor Lists, presumably from that year. We have not yet analyzed those lists and they are not considered as part of the Report.

714. According to the testimony of various witnesses, there are several judges who contacted Chief Justice Mulligan to raise concerns about the hiring and promotion process for Probation Department employees. Those judges include Judge Elizabeth LaStaiti and Judge Catherine Sabaitis. We did not interview or seek testimony from those judges.

715. Independent Counsel took testimony from Executive Director of the Office of the Community Corrections, Stephen Price, and his Deputy Director, Patricia Horne. Price stated that he received calls from legislators offering recommendations for candidates and Horne testified that for every interview on which she sat for an OCC position, she received names of recommended candidates. Both Price and Horne, however, testified that the names of recommended candidates were provided only to enable the interviewer to inform the candidate that someone had made a recommendation on their behalf. Price is a friend of Commissioner O’Brien’s and has spoken to O’Brien several times per week since he was suspended.⁵⁴⁶ Because for at least some purpose, names of recommended candidates were given to interview panels, and because Price and O’Brien have a close relationship, the claim by Price and Horne

⁵⁴⁶ Testimony of Stephen Price, October 21, 2010 (Exhibit 126), 143-44.

that hiring in OCC was not compromised is at least questionable and probably untrue. Other witnesses within OCC who may possess relevant information have not yet been interviewed.

716. Independent Counsel requested images of the hard drives of the Probation Department computers issued to Deputy Commissioners Francis Wall and Elizabeth Tavares. We are awaiting receipt of those images and accordingly have not analyzed them or reviewed the documents and emails contained on them.

717. Independent Counsel received images of the hard drives of Commissioner O'Brien, Manager of Intergovernmental Relations Maria Walsh and Deputy Commissioner Christopher Bulger. Independent Counsel reviewed the active Word, Word Perfect, Excel and pdf documents found on Walsh's and Bulger's computers. (O'Brien did not have any active files on his computer). We have not yet reviewed any other active files, such as websites, and have not yet reviewed any inactive or deleted files on any of these hard drives.

718. Independent Counsel was informed late in the investigation that there is a server controlled by AOTC that contains Probation Department files. We have not searched that server for relevant documents.

719. Regional Supervisor Mark McHale and Chief Probation Officer Mark Prisco, along with several other Probation Department employees, were deposed in the discrimination matter of *Brown, et al. v. O'Brien, et al.*, Civ. A. No. 07-3552, pending in Suffolk Superior Court. We have not yet reviewed those transcripts for their relevance to this investigation.

CONCLUSION

This Report, while substantial, is incomplete. Many avenues of obvious inquiry could not be fully explored given time and resource constraints. For example, Independent Counsel was mindful that this investigation was focused on the Probation Department, not other state agencies and not on the Legislature. Legislative conduct was not fully explored except as immediately relevant to Probation hiring. Hiring and promotion practices in other state agencies and departments was beyond the scope of the investigation except as specifically relevant to Commissioner O'Brien. Accordingly, many questions remain unanswered as of this writing.

Independent Counsel is realistic that recommendations to state agencies as regards candidates for initial hire or promotion are not unique to Probation. Indeed, even as to Probation, such recommendations are neither inappropriate nor inconsistent with fairness and objectivity in and of themselves. This investigation, however, revealed a degree of abuse and systemic corruption in hiring and promotion that cannot be ignored, and which as implemented, became an obstacle to the very principles of hiring articulated in Trial Court policies. That extent of interference with merit hiring and promotion transformed a credible process into a patronage hiring machine. However well-oiled, that machine no longer serves the public interest.

Respectfully submitted,

Paul F. Ware,
Independent Counsel

Dated: November 9, 2010

APPENDICES

APPENDIX 1: INDEPENDENT COUNSEL ATTORNEYS

Paul Ware, Jr.

Kevin Martin

Damian Wilmot

Sheryl Koval Garko

Kunal Pasricha

Josh Launer

Andrew Batchelor

Kathleen Roblez

APPENDIX 2: WITNESSES INTERVIEWED INFORMALLY

	Name	Title	Date Interviewed
1.	John Alicandro	Former Probation Officer	August 25, 2010
2.	Dianne Boland	Probation Officer	June 21, 2010
3.	Donald Cochran	Former Commissioner of Probation	October 1, 2010
4.	Donna Connolly	Fiscal Administrator for the Office of the Commissioner of Probation	October 25, 2010
5.	Ronald Corbett	Acting Administrator, Office of the Commissioner of Probation	June 1, 2010
6.	John Cremens	Former Deputy Commissioner of Probation	June 3, 2010
7.	Edward Dalton	Former Regional Supervisor for the Office of the Commissioner of Probation	June 1, 2010
8.	Judge Barbara Dortch-Okara	Former Chief Justice for Administration and Management	June 23, 2010
9.	Thomas Farragher and Scott Allen	Boston Globe reporters	June 4, 2010
10.	David Friedman	Former First Assistant Attorney General	May 25, 2010 June 30, 2010
11.	Jason Harder	Probation Officer	September 22, 2010
12.	Judge Robert F. Kumor	Former First Justice, Springfield District Court	August 2, 2010
13.	Edward J. McGinn, Thomas Gaffney and Erik Boss	Worcester Police Department	June 11, 2010
14.	Leonard Mirasolo	Aide to Massachusetts Speaker of the House Robert DeLeo	October 29, 2010

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15.	Janet Mucci	Director of Personnel for the Office of the Commissioner of Probation	June 17, 2010
16.	Chief Justice Robert A. Mulligan	Chief Justice for Administration and Management, Administrative Office of the Trial Court	May 26, 2010
17.	Brian Murphy	Regional Supervisor for the Office of the Commissioner of Probation	June 23, 2010
18.	Judge Gilbert J. Nadeau	District Court Judge, Fall River District Court	June 7, 2010
19.	Richard O'Neil	Regional Administrator of Probate and Family Courts	June 22, 2010
20.	David Parke	Former Chief Probation Officer	July 6, 2010
21.	First Justice Joseph Reardon	First Justice, Barnstable District Court	June 12, 2010
22.	Rep. John H. Rogers	Massachusetts State Representative	July 27, 2010
23.	Yvonne Roland	Administrative Assistant and Human Resources Representative for the Office of the Commissioner of Probation	June 17, 2010
24.	Chief Justice Barbara J. Rouse	Superior Court Chief Justice	June 14, 2010
25.	Anthony Sicuso	Former Legal Counsel for Office of the Commissioner of Probation	June 2, 2010
26.	Ellen Slaney	Regional Supervisor for the Office of the Commissioner of Probation	June 11, 2010

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APPENDIX 3: WITNESSES WHO APPEARED IN RESPONSE TO SUBPOENAS

	Name	Title	Date of Testimony
1.	Jeffrey Akers	Regional Supervisor for the Office of the Commissioner of Probation	August 25, 2010
2.	John Alicandro	Former Probation Officer	October 1, 2010
3.	Stephen Bocko	Deputy Commissioner of the Office of the Commissioner of Probation	September 13, 2010
4.	Richard Bracciale	Chief Probation Officer	September 24, 2010
5.	Christopher Bulger	Deputy Commissioner, Legal Counsel, Office of the Commissioner of Probation	October 13, 2010
6.	William Burke	Former Deputy Commissioner of Probation	July 22, 2010
7.	Francis Campbell	Regional Supervisor for the Office of the Commissioner of Probation	August 10, 2010
8.	Scott Campbell	Finance Director, Committee to Elect Tim Cahill	August 31, 2010
9.	James Casey	Former Chief Probation Officer	October 5, 2010
10.	Donna Connolly	Fiscal Administrator, Office of the Commissioner of Probation	September 1, 2010
11.	Michael Coughlin	Director of Human Resources, Massachusetts State Lottery Commission	September 2, 2010
12.	Ronald Corbett, Jr.	Acting Administrator, Office of the Commissioner of Probation	November 3, 2010
13.	John Cremens	Former First Deputy Commissioner of Probation	August 6, 2010
14.	Edward Dalton	Supervisor of Probation Services	August 17, 2010

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15.	Nicholas DeAngelis	Former Supervisor of Probation Services	August 24, 2010
16.	Robert DeLeo	Speaker of the Massachusetts House of Representatives	November 1, 2010
17.	Joseph Dooley	Chief Probation Officer	September 17, 2010
18.	Judge Barbara Dortch-Okara	Former Chief Justice for Administration and Management	October 13, 2010
19.	Bernard Dow	Former Assistant Chief Probation Officer	October 21, 2010
20.	Dianne Fasano	Regional Supervisor of the Office of the Commissioner of Probation	September 3, 2010
21.	Thomas Finneran	Former Speaker of the Massachusetts House of Representatives	September 21, 2010
22.	Eileen Glovsky	Deputy Treasurer, Executive Director, Commonwealth Covenant Fund	October 18, 2010
23.	Joseph Hamilton	Former Chief Probation Officer	September 20, 2010
24.	Christine Hegarty	Human Resources, Administrative Office of the Trial Court	October 20, 2010
25.	Patricia Horne	Deputy Director, Office of Community Corrections	October 4, 2010
26.	Eugene Irwin	Regional Program Manager – ELMO, Office of Community Corrections	October 15, 2010
27.	Karen Jackson	Probation Officer	October 14, 2010
28.	Michael LaFrance	Chief Probation Officer	September 29, 2010
29.	Michael LeCours	Assistant Supervisor, Office of Community Corrections	October 23, 2010
30.	Paul Lucci	Deputy Commissioner, Office of the Commissioner of Probation	August 23, 2010

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31.	Michelle Cahill-Martino	Administrative Assistant to Commissioner of Probation	July 21, 2010 October 1, 2010
32.	Rita McCarthy	Chief Probation Officer	September 27, 2010
33.	Sarah McColgan	Tobacco Control Director, Massachusetts Health Officers Association	September 29, 2010
34.	Edward McDermott	Administrative Assistant to Deputy Commissioner	August 25, 2010
35.	Mark McHale	Regional Supervisor for the Office of the Commissioner of Probation	July 30, 2010
36.	Eugene Monteiro	Former Probation Officer	October 6, 2010
37.	Mark Montigny	Massachusetts State Senator	October 26, 2010
38.	James Moriarty	President and CEO of Ludlow Boys & Girls Club	September 29, 2010
39.	Neil Morrison	Former First Deputy Treasurer, Department of Treasury	September 30, 2010
40.	Janet Mucci	Director of Personnel for the Office of the Commissioner of Probation	June 24, 2010 October 5, 2010
41.	Chief Justice Robert Mulligan	Chief Justice for Administration and Management of the Trial Court	October 4, 2010
42.	Brian Murphy	Regional Supervisor for the Office of the Commissioner of Probation	August 13, 2010
43.	John O'Brien	Commissioner of Probation	August 26, 2010
44.	Richard O'Neil	Regional Supervisor of Probate and Family Courts	August 3, 2010
45.	Mark Pacheco	Massachusetts State Senator	October 20, 2010
46.	David Parke	Former Chief Probation Officer	September 22, 2010
47.	Kathleen Petrolati	Regional Program Manager - ELMO	October 18, 2010

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48.	Thomas Petrolati	Massachusetts State Representative	October 6, 2010
49.	Stephen Price	Director, Office of Community Corrections	October 21, 2010
50.	Mark Prisco	Chief Probation Officer	September 24, 2010
51.	John Quinn	Regional Program Manager, Office of Community Corrections	November 1, 2010
52.	Edward Rideout	Supervisor of Probation Services	August 27, 2010
53.	Nilda Rios	Supervisor of Probation Services	August 4, 2010
54.	Edward Ryan	Regional Program Manager-ELMO, Office of the Commissioner of Probation	June 29, 2010 July 15, 2010
55.	Francine Ryan	Regional Supervisor for the Office of the Commissioner of Probation	August 9, 2010
56.	Robert Ryan	Chief Probation Officer	October 22, 2010
57.	Mary Santos	Assistant Chief Probation Officer	November 5, 2010
58.	Anthony Sicuso	Former Legal Counsel for Office of the Commissioner of Probation	September 30, 2010
59.	Ellen Slaney	Regional Supervisor for the Office of the Commissioner of Probation	August 5, 2010
60.	Arthur Sousa	Probation Officer	October 7, 2010
61.	Elizabeth Tavares	First Deputy Commissioner for the Office of the Commissioner of Probation	July 13, 2010 October 22, 2010
62.	Lucia Vanasse	Administrative Assistant to Commissioner of Probation	July 20, 2010
63.	Francis Wall	Deputy Commissioner, Officer of the Commissioner of Probation	August 19, 2010
64.	Maria Walsh	Manager, Intergovernmental Relations, Office of the Commissioner of	July 19, 2010 November 1,

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		Probation	2010
65.	Patricia Walsh	Former Deputy Commissioner of the Office of the Commissioner of Probation	August 30, 2010
66.	Joseph Zavatsky	Probation Officer	October 12, 2010
67.	Jill Ziter	Former Regional Coordinator	September 23, 2010

APPENDIX 4: ADDITIONAL SUBPOENAED WITNESSES

	Name	Title	Date of Scheduled Testimony
1.	Stephen Alpers	Chief Probation Officer	November 9, 2010
2.	Robert Creedon, Jr.	Former Massachusetts State Senator	November 9, 2010

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APPENDIX 5: UNAVAILABLE WITNESSES

	Name	Title	Reason
1.	Maribeth Borasri	Regional Supervisor for the Office of the Commissioner of Probation	Subpoena withdrawn due to illness
2.	Kevin Cuniff	Former Commissioner of Probation	Unresponsive to subpoena
3.	Edward Driscoll	Regional Supervisor for the Office of the Commissioner of Probation	Subpoena withdrawn due to illness
4.	James Flannery	Chief Probation Officer	Subpoena withdrawn due to illness
5.	James Rush	Former Chief Probation Officer	Subpoena withdrawn due to illness
6.	Vicki Williams	Former Department of the Treasury Employee	Unresponsive to subpoena

APPENDIX 6: SOURCES OF ELECTRONIC DOCUMENTS

	Name	Title	Electronic Sources
1.	Jennifer Alonso	Fiscal Specialist	Email
2.	Alfred Barbalunga	Chief Probation Officer	Email
3.	Stephen Bocko	Deputy Commissioner	Email
4.	Christopher Bulger	Deputy Commissioner, Legal Counsel	Email, hard drive
5.	Mindy Burke	Program Manager	Email
6.	William Burke	former Deputy Commissioner	Email
7.	Patricia Campatelli	Statewide Program Supervisor, Office of Community Corrections	Email
8.	Christopher Cannata	Assistant Court Service Provider	Email
9.	Donna Connolly	Fiscal Administrator	Email
10.	Edward Dalton	Former Supervisor of Probation Services	Email
11.	Lisa Hickey	Community Service Assistant Statewide Supervisor, Office of Community Corrections	Email
12.	Patricia Horne	Deputy Director of Office of Community Corrections	Email
13.	Edward Johnson	Administrative Assistant to Commissioner of Probation	Email
14.	Paul Lucci	Deputy Commissioner	Email
15.	William Maney	Budget Analyst, Administrative Office of the Trial Court Fiscal Department	Email
16.	William Marchant	Chief Financial Office, Administrative Office of the Trial Court Fiscal Department	email

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17.	Brian Mirasolo	Acting Chief Probation Officer	Email
18.	Janet Mucci	Personnel Director	Email
19.	Brian Murphy	Supervisor of Probation Services	Email
20.	Kimberly Norton	Fiscal Manager, Office of Community Corrections	Email
21.	Genevieve O'Brien	Office of Community Corrections	Email
22.	John O'Brien	Commissioner	Email, hard drive
23.	Richard O'Neil	Regional Administrator	Email
24.	Kathleen Petrolati	Regional Program Manager-ELMO	Email
25.	Stephen Price	Director of Office of Community Corrections	Email
26.	Mark Prisco	Chief Probation Officer	Email
27.	Yvonne Roland	Operations Coordinator	Email
28.	Edward Ryan	ELMO Program Manager	Email
29.	Robert Ryan	Chief Probation Officer	Email
30.	Valdemar Santos		Email
31.	David Skocik	Community Service Acting Statewide Supervisor, Office of Community Corrections	Email
32.	Ellen Slaney	Regional Administrator	Email
33.	Arthur Sousa	Probation Officer	Email
34.	Elizabeth Tavares	First Deputy Commissioner	Email
35.	Lucia Vanasse	Assistant to the Commissioner	Email
36.	Francis Wall	Deputy Commissioner	Email
37.	Maria Walsh	Manager of Intergovernmental Relations	Email, hard drive

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38.	Patricia Walsh	former Deputy Commissioner	Email
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APPENDIX 7: TEN MOST FREQUENT SPONSORS

Sponsor	No. of Candidates Sponsored
Montigny	54
Brewer	44
DiMasi	36
Travaglini	28
Pacheco	24
Creedon	22
Hart	21
McGee	21
Tobin	20
Panagiotakis	20

APPENDIX 8: TWENTY MOST FREQUENT RECIPIENTS OF CONTRIBUTIONS

Recipient	Contributions
Petrolati	87
Montigny	46
DiMasi	34
Glodis	25
Travaglini	21
Buoniconti	20
Hart	19
Murray	19
DeLeo	18
Finneran	16
Menard	14
Rush	14
Baddour	13
Pacheco	13
Walsh	13
O'Flaherty	12
Rogers	12
Alicea	9
Brewer	9
Antonioni	8