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Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
Los Angeles, California 90012

Re: **Review of Los Angeles Sheriff's Background Investigations Process**

Dear Supervisors:

In February 2008, the Office of Independent Review ("OIR") began a review of the Personnel Bureau's Background Investigations Unit ("BIU") of the County of Los Angeles Sheriff's Department ("LASD" or "Department"). Through its monitoring of internal investigations, OIR had observed that several newly hired deputies had engaged in misconduct. This report highlights the findings and offers recommendations coming out of that review.

The report first notes that in the years 2005, 2006 and 2007 there was a significant push for hiring by LASD that resulted in over 2,500 deputies being hired. The report also observes that while the push to hire deputies was occurring, there was a striking decrease from 2004 in the percentage of applicants disqualified by the background investigation process. The report finds that during this hiring push, while the Department did not significantly relax its internal standards per se, the Department's application of those hiring standards to individual applicants changed dramatically, resulting in a significantly smaller percentage of applicant disqualifications. In other words, while the Department technically adhered to its official internal standards, it developed a new "holistic" approach to hiring, in which those involved in the hiring process were instructed to consider negative information about applicants in the context of the entire applicant history. This "holistic" approach to hiring resulted in applicants being hired who would have been automatically disqualified in years past and provided little principled guidance to those tasked with deciding who should be hired. This report provides a further explication of this change in hiring "philosophy" and the potential pitfalls in adopting such a "philosophy." This report reviews the thoroughness of background investigations from 1999 to 2008 and while it finds that a great majority of the investigations were thorough, a

significant number of those reviewed received insufficient follow up in pursuing potential negative history. The report sets out case studies as illustrative of this “failure to follow up” phenomenon as well as questionable hiring recommendations emblematic of the consequences of deployment of the new “holistic” hiring philosophy. This report also explains how the communication of this new hiring philosophy may have impacted on the way in which other participants in the hiring process were asked to conduct their work, such as the contract psychologists entrusted with determining whether applicants possessed the psychological makeup to perform well as peace officers. The report also discusses how communication to psychologists about disqualification rates has the potential to undermine the integrity of the system. Finally, this report provides a series of recommendations designed to ensure that the traditional gate keeping functions associated with the LASD hiring process continue to accomplish their goal.

I. Introduction: The LASD Hiring Process

The hiring process at LASD consists of a number of steps before a deputy sheriff applicant is offered employment. After an applicant has passed the requisite initial written and oral examinations, his or her submission of a personal history questionnaire commences the BIU’s background investigation of the applicant. Typically, an applicant for deputy sheriff trainee will undergo a series of interviews, evaluations and thorough records checks in the BIU’s background investigation process.

The personal history questionnaire creates the foundation for an applicant’s background investigation. In the questionnaire, the applicant is requested to provide information regarding the position for which he or she is applying and his or her personal history. In support of the personal history questionnaire, applicants are required to provide certain documentation. The background investigator then interviews the applicant, and in this interview, the investigator reviews the personal history questionnaire with the applicant for accuracy. After the initial interview with the applicant, the background investigator conducts field work to determine whether the information provided by the applicant is accurate and to obtain any law enforcement reports regarding the applicant. This field work includes making residence checks and interviewing family members and neighbors, and obtaining feedback from previous employers and personal and law enforcement references. The background investigator will also run a battery of requests for information through various law enforcement databases to verify the applicant’s criminal history.

While conducting the background investigation field work, the investigator periodically meets with the applicant to discuss the status of the background investigation process, the applicant’s autobiography statement and other submitted statements or reports. When the background investigator has completed his or her background investigation of the applicant, the investigator writes a summary of findings and schedules the applicant for a polygraph examination.

If the applicant passes the polygraph examination, the background investigator forwards

the background investigation file to a BIU sergeant. The sergeant reviews the completed background investigation and recommends the Department either hire or not hire the applicant. If the BIU lieutenant concurs with the sergeant's recommendation to hire the applicant, the applicant receives a conditional offer of employment. If the applicant accepts the conditional offer of employment, the BIU arranges for the applicant to receive psychological and medical evaluations. The psychological evaluation is conducted by a psychologist under contract with the Department, and the medical evaluation is conducted by a physician with the County's Occupational Health Program. If the applicant passes both the psychological and medical evaluations, he or she is eligible to enter the Sheriff's Academy. Once a deputy graduates from the Academy, he or she is on probation with the Department for one year, and during that time, the Department can terminate the applicant for any reason. If the deputy successfully completes probation, he or she then receives Civil Service protection and can only be removed from employment for cause.

II. The Background Investigation Process: Statistical Information

Between 2003 and 2008, the Department had a substantial increase in the number of background investigations that it initiated for the position of deputy sheriff trainee. In each year, except 2008, the Department's data also evidenced an increase in the number of deputy sheriff trainees hired. The following is a summary of the data provided by BIU regarding the Department's number of background investigations initiated and hired deputy sheriff trainees, respectively, for each year:

2003: 209 investigations and 75 hires	35%
2004: 1,581 investigations and 207 hires	13%
2005: 2,053 investigations and 578 hires	28%
2006: 4,228 investigations and 1,103 hires	26%
2007: 5,526 investigations and 1,252 hires	22%
2008: 4,845 investigations and 431 hires.	9% ¹

This data demonstrate that beginning in 2004, BIU personnel initiated and conducted a substantially higher number of background investigations and processed substantially more applicants for the position of deputy sheriff trainee. The number of investigations initiated and deputy sheriff trainees hired increased each year until 2008, when the number of investigations remained high and the number of deputy sheriff hires substantially decreased.

While the raw number of investigations and hires escalated and remained high in the calendar years 2005 through 2007, even more dramatic are the ratios of investigations to hires in those years. In the years in which hiring was occurring at a quickened pace, the percentages of

¹ The data for 2008 are year to date through December 18, 2008. As stated, the Department provided OIR this data for each of the listed years. Because the Department itself questioned the validity of the data for years 1999 through 2002, the data for those years are not included in this report.

investigations that resulted in hires doubled from 2004. Put another way, the percentages of applicants who were being disqualified by the background investigative process during the hiring push were significantly lower than in 2004, the year immediately preceding and in 2008, the year immediately subsequent to the hiring blitz. These numbers and percentages alone are indicators that apparently something dramatic was happening during the hiring push with regard to the rates at which the Department was using the background investigative process to screen out applicants.

III. Applicable Standards Governing the Conduct of BIU's Background Investigations

The decision whether to hire a deputy sheriff applicant is clearly one of the most important decision that the Department faces. Modern day policing requires a high degree of talent, skill, and judgment. Once a peace officer receives his or her credential, the Department and the public entrust that person with awesome authority in order to fulfill his or her responsibilities, including the authority to use deadly force and to bring persons into custody. Accordingly, it is critical that the background investigative process serve as an effective gatekeeper in order to move forward qualified applicants while screening out those who lack the necessary qualities to succeed as a peace officer. The background investigations conducted to inform the decision maker about the qualities of each particular applicant are some of the most important investigations conducted by the Department. With that in mind, it is incumbent upon the Department to ensure that its background investigations are the best that they can be.

California's Commission on Peace Officer Standards and Training ("POST") is an independent commission that devises minimal requirements for background investigations for law enforcement agencies. In addition to setting minimal standards, POST annually inspects departments to determine whether the investigations conducted are in compliance with those standards. POST has routinely found that LASD has complied with its minimal standards.

OIR also learned during its review that LASD exceeded the minimal requirements set out by POST in a few respects. For example, the requirement of a polygraph examination for LASD applicants is an important step in the Departmental process not mandated by POST. OIR found that the Department's use of the polygraph examinations in the background investigation process has had a positive effect of confirming information collected in the earlier phases of the background investigation and causing applicants to respond candidly about questionable behavior or activity. In some instances, the polygraph results have caused BIU personnel to make additional inquiry into specific areas of an applicant's background, and this includes areas that a BIU investigator may have missed or failed to collection additional information during the initial phase of the background investigation process. In the bulk of the personnel files that OIR analyzed, the Department's background investigative process elicited enough information that, assuming sufficient follow up, could provide the basis for a thorough vetting of each applicant.²

² A detailed description of the POST standards and additional application materials required by LASD are included as an Addendum to this report. In addition to what the Department already does above and beyond POST standards, OIR's work on this project has

IV. BIU's Organization and Personnel

BIU is part of the Department's Personnel Bureau, and while a captain is the highest ranking commander of the Personnel Bureau, it is a lieutenant who is responsible for the day-to-day operations of BIU and its personnel. The current captain and lieutenant were assigned to BIU in late 2006, and with direction from the captain, the BIU lieutenant supervises the Department's background investigation process and reviews certain completed background investigation files. The BIU lieutenant supervises seven sergeants and each sergeant's team of background investigators and reviews the intake page of all completed background investigation files and the entire file of all applicants who are recommended for disqualification during the background investigation phase. During the lieutenant's review of the background investigation files for disqualified applicants, he seeks to ensure that the Department conducted a thorough background investigation, that there was no bias in the recommendation for disqualification, and that each team complied with POST requirements and the Department's hiring standards. The lieutenant may also review completed background investigation files for applicants who are recommended for hire by a sergeant with a notation of a "clinical interview with concerns."³

The fact that the background investigations lieutenant is tasked with reviewing all files recommended for disqualification but only selected files recommended for hire is reflective of the Department's current hiring philosophy set out in detail below. OIR takes the position that, assuming that the lieutenant has insufficient resources to review all background investigations, and given that it is critical to ensure that peace officers have the necessary talent, skill, and judgment to exercise the authority to use force and take persons into custody, he should be using those resources on reviewing the files of all those applicants recommended for hire rather than all those recommended for disqualification.

When sergeants and deputies who conduct the actual background investigations are assigned to BIU, there is no requisite that of prior experience in conducting such investigations or having attended a formal background investigation course.⁴ Currently, no BIU sergeant has

caused us to learn that a helpful source of information available to help assess the character of applicants are the applicant's MySpace or Facebook pages. Access to those pages can weed out would-be police officers who promulgate violent images, racist comments, or other objectionable material. See, e.g., "NYPD Eyes Web Pages of Recruits", New York Post, January 30, 2009. While our review of LASD's background investigative files discovered a few references to material learned about the applicant from the Internet, inquiry into those information sources of the 21st century has not been routinely undertaken by the BIU as an investigative step. We recommend that the Department consider doing so.

³ Sergeants may sometimes recommend applicants for hire but delineate "concerns" about the application in the file.

⁴ Under the current allocation of positions to the BIU, the deputies who work as

more than two and one-half years of experience in conducting or supervising background investigations. Consequently, as the increase in background investigations and deputy sheriff hires moved into high gear, the Department faced a lack of longevity and experience in supervising background investigations.⁵

BIU has no internal formal training program for its supervisors or background investigators. While POST recommends that background investigators attend a background investigations course, BIU does not require attendance to such courses. If the time and resources are available, BIU sergeants are encouraged to attend the POST background investigation course. However, most – if not all -- BIU sergeants learned how to conduct background investigations and to supervise their background investigators via “on the job training” from an experienced sergeant.⁶ The experienced sergeant serves as a “mentor” and describes and/or shows the inexperienced sergeant how to conduct and supervise background investigations. In addition to the “mentor” training, an inexperienced sergeant uses the POST guidelines to assist him or her in conducting and supervising background investigations. BIU supplements this informal training with unit meetings to discuss the Department internal guidelines, recommended interpretations of how to apply the Department internal guidelines, and any trends or patterns or concerns identified during the course of prior or current background investigations. Further, the BIU lieutenant often personally discusses with sergeants or investigators issues that arise during the course of various background investigations.

In 2005, BIU received a number of complaints from applicants. These complaints alleged unprofessional service from the BIU support staff and bias from the BIU investigators.⁷

investigators do not have bonus status. As a result, deputies with investigative experience as detectives elsewhere in the Department are not motivated to give up their bonus pay in order to come to the BIU. Because, as is stated throughout this report, the quality of background investigations is critical to ensuring a robust applicant screening process, OIR recommends that the Department consider designating the background investigators as “bonus” items.

⁵ To supplement the assigned BIU investigator, the Department contracts with independent background investigators to assist in conducting background investigations during high volume periods. These independent background investigators are usually former or retired Department members who have some experience in conducting background investigations.

⁶ OIR has been informed that most of the sergeants currently in the BIU have attended the POST background investigations course.

⁷ Because the Department did not have documentation or reliable records of these complaints, OIR was unable to determine the legitimacy of the complaints or the appropriateness of the Department’s response. OIR recommends that, in the future, such complaints be documented and appropriate follow up be conducted on a more targeted basis than what may have occurred in 2006.

In early 2006, a lieutenant was assigned to the unit with clear instructions to “clean house,” or remove the alleged unprofessional staff or biased investigators. Many of the personnel who were reassigned had gained several years of experience in background investigations and, according to some sources, would speak candidly to contract psychologists about their concerns with particular applicants. Those personnel indicated that the candid dialogue between contract psychologists and BIU supervisors was undertaken in order to “maintain the high standards of the Department” in the background investigation process phase. Regardless of the motive or reason for the reassignments, the result was that by late 2006, there were new support staff and background supervisors who comprised BIU, which significantly lessened the pre-2006 experience level in BIU.

Because the information about the changeover in personnel in the BIU is entirely anecdotal, OIR cautions against making too much out of the perceptions and views of former personnel assigned to the unit. First, it is human nature to talk positively about the “good old days” when the relater of information was working at the unit and less positively about the current state of affairs, particularly if the relater has been moved out against his or her will. Second, the statistics from the hire rates of 2005 suggest that the increased “pass rates” of applicants had already begun to spike before the changeover in personnel in the unit that occurred a year later. What can be said about the 2006 personnel overhaul is that it did significantly decrease the level of experience in the BIU and may have lead to a group more amenable to conducting themselves under the new “holistic” philosophy of hiring described below.

Despite the above, and with significant exceptions, OIR’s review found that the large majority of background investigations conducted by the BIU were objective and thorough.⁸ Having said that, OIR’s review found that the discretion afforded background investigators resulted in differences in degrees of thoroughness and variances in the investigators’ assessment of the “warning signs” elicited through the background process. As to the thoroughness and follow up issues noted below, OIR found several cases in which BIU investigators either failed to investigate further certain background information (e.g., conduct thorough investigations such as making thorough home visits or following up on the applicant’s account of questionable events or decisions or sending inquiries to other law enforcement agencies). There were instances where residence checks, prior employer checks, and supervisory reviews of completed cases were less than thorough, background investigators failed to verify possible criminal activity with local law enforcement agencies, and background investigators failed to verify the applicant’s explanation of negative information. With regard to the assessment by the background investigators, OIR’s review found cases in which there was a seemingly under

⁸ This general finding is a testament to the tradition of good work that BIU maintained and carried forward during a period of intense stress on the unit created by the massive volume of background investigations demanded of the unit and the pressure from above to meet their one thousand deputies per year hiring goals.

appreciation of “warning signs” in deciding whether to recommend a deputy sheriff trainee applicant for hire (e.g., alcohol or drug abuse, criminal activity, negative credit history, and disqualification or termination by other law enforcement agencies).⁹

V. The Department’s Hiring Standards – Insignificant Changes in the Actual Standards – A Sea Change in How Those Standards Are To Be Applied

Since 1999, the Department has only once revised its internal standards or guidelines to determine who should become a deputy sheriff trainee. In 2006, the changes to written standards were minor¹⁰; however, in that same period, the Department changed its approach to reviewing deputy sheriff applicants from a “rigid application of its internal guidelines” to a “holistic approach.” Under the “rigid application approach,” BIU reviewed the applicant under the Department’s internal guidelines, and if the applicant’s background showed any questionable or prohibited activity, BIU would disqualify the applicant. Under the holistic approach, BIU reviews the “whole” applicant under the Department’s internal guidelines, and if the applicant’s background shows any questionable or prohibited activity, BIU attempts to place the questionable or prohibited activity in context with the applicant’s other life experiences. Under the holistic approach, BIU considers additional factors -- such as the age of the activity, the maturity of the applicant when the activity occurred, or the applicant’s accomplishments after the activity occurred – the simple occurrence of the questionable or prohibited activity alone does not generally disqualify an applicant.¹¹

The Department explains that in making fundamental changes in the methods used to conduct background investigations, it made a conscious decision to adopt an inclusive process that considers an applicant’s entire life history, rather than a rigid exclusive process designed to

⁹ It is difficult to assess to what degree the insufficient follow up in certain background investigations was influenced by the change in hiring “philosophy” espoused by Departmental managers and detailed in the next section of this report, particularly since OIR found those same deficiencies in background investigations conducted before the large hiring increase. On the other hand, the under appreciation of certain negative information in formulating hiring recommendations that OIR detected was undoubtedly influenced by the Department’s change in hiring philosophy, since prior to that change, certain negative information adduced would automatically disqualify applicants.

¹⁰ Traditionally, and in part, in order to protect the integrity of the process, law enforcement agencies have not publicized details of their internal hiring standards. To maintain the confidentiality of the Department’s internal standards and because divulging those standards is not critical to the report’s conclusions, OIR has not included or described in detail those standards in this report.

¹¹ The insufficient follow up issue was not as critical to the hiring process in the pre-holistic world since certain negative information were automatic disqualifiers regardless of the applicant’s explanation for the negative history.

identify specific character traits that automatically disqualified applicants. While, as the Department asserts, this change resulted in a “successful” hiring campaign, such a change in philosophy may result in significant deleterious consequences. While it is certainly true that every applicant should be assessed on an individualized basis, law enforcement managers could likely agree that there are certain characteristics or negative history about an applicant that should continue to result in automatic disqualification. For example, it is questionable whether an applicant previously fired from a prior police agency for excessive force should ever be seriously considered for employment by the Department. Yet, under the Department’s holistic approach, the termination by another agency or the excessive use of force is only one issue to be factored with the rest of the applicant’s life history.

The potential drawbacks of this more liberal interpretation of the Department’s internal guidelines were compounded by the failure of the Department to provide written guidance regarding how to implement the new philosophy. The contract psychologists and BIU background investigators received no training in or documentation with regard to how to apply the new approach, and they were left to their own interpretations regarding the appropriate application of the Department’s internal guidelines to their investigations. A few former BIU background investigators suggested that with the increased volume of applicants and with more discretion to evaluate holistically negative information about applicants that would in past years have resulted in automatic disqualification, the Department incrementally compromised or relaxed one standard after another until a significant number of questionable applicants were passed on to the next phase of the process.

Without clear guidance from the Department, the decision for the background investigator about whether negative information learned about an applicant should result in automatic disqualification is one that is not easily answerable. OIR does not necessarily disagree that, in some cases, the negative information should be considered in context with the age of the information and whether there are subsequent signs of rehabilitation or maturity. In OIR’s view, however, there are some categories of behavior that should automatically disqualify an applicant for consideration to be deputy sheriff on the Department, and those categories should be rigorously and consistently applied. To do otherwise leads to a situation in which a wide divergence of application of the holistic approach occurs and the countervailing pressures to “hire bodies” hold too much sway.

As the percentages listed above confirm, the wholesale adoption of the holistic approach did apparently result in a significantly higher percentage of applicants making it through the background investigative process. Certainly, this fact lends credence to those who believe that it is not happenstance that the adoption of the new philosophy coincided with the perceived need to hire a thousand deputies in 2006 and 2007. Rather than falling short of the hiring goal if the background investigations revealed too many problematic applicants, the holistic approach arguably paved a way for the Department to achieve its goal without admitting to any relaxation of standards. It cannot be denied that the Department’s approach did result in applicants being

hired who would not have been hired in years past and allowed it to achieve its hiring goals.¹²

VI. Case Studies: Incomplete Investigations and Questionable Hiring Decisions

As noted above, the great majority of the three hundred plus BIU's background investigations (1999-2008) that OIR reviewed were found to be thorough; however, the following cases represent several categories of insufficient follow up that impacted the thoroughness of a BIU investigation. More significantly, the information adduced during the investigation and the Department's decision to hire applicants in spite of the negative information obtained raise concerns about the Department's hiring decisions under its new holistic philosophy of 2005, 2006, and 2007.¹³

Case # 1:

Ten years prior to his application date, the applicant was arrested for driving under the influence of alcohol. The applicant pled no contest, was placed on probation for three years, fined, sentenced to two days in jail, and had his license suspended for a year. In lieu of serving time in jail, the applicant performed 40 hours of community service. During the background investigation, the applicant admitted to this arrest and conviction; however, he failed to inform the investigator that at the time of his driving under the influence arrest, the applicant was also arrested on a charge of possessing a vehicle with an altered vehicle identification number ("VIN").

When confronted with his omission regarding his arrest on the altered VIN, the applicant's explanation was that he "completely forgot about the charge due to it being rectified immediately after it became an issue." The applicant further explained that the previous owner of the truck had done a lot of body work on it and must have removed the VIN plate during the restoration work. The background investigator contacted the arresting police agency and confirmed that the truck had been legally owned by the applicant and that the charge relating to

¹² As a result of the recent decrease in hiring and the lessened need for new employees, the Department has averred, and OIR has no reason to dispute the contention, that it has significantly increased the scrutiny with of its current applicants, with only the "best of the best" being extended job offers. While this is heartening, in OIR's view, the application of hiring standards should not be dependent on the perceived need for personnel in any calendar year. The application of hiring standards should be based on more principled, consistent and uniform criteria, whether the Department is seeking one hundred or one thousand hires.

¹³ While emblematic of background files with incomplete follow up and/or questionable hiring decisions, these cause studies do not contain the universe of files OIR reviewed that raised similar concerns. Moreover, the noted deficiencies in follow up were also found in some pre-2006 files that OIR reviewed. OIR also would like to emphasize that these illustrations are exceptions to what are usually thorough investigations and should not be interpreted to undermine our finding that most of the background investigations reviewed were thorough.

the altered VIN had been dropped.

During a traffic accident investigation when the applicant was 21 years old, he was detained and cited for driving on a suspended license. During the background investigation, the applicant admitted to this detention and citation and stated that he paid the resulting fine; however, the applicant failed to inform the investigator of two other subsequent detentions and citations for driving on a suspended license. When confronted with his omission regarding the two other detentions and citations, the applicant's explanation was that he forgot about them. The applicant represented that both citations were dropped. According to the applicant, one citation was dropped because it was determined that he was validly driving on a 30-day temporary license, and the second citation was dropped because the Department of Motor Vehicles failed to notify him that his license was suspended an additional six months because his driving under the influence conviction occurred when he was under 21 years old. According to the applicant, both citations were dismissed in court; however, there is no documentation in the personnel file that the background investigator obtained, or tried to obtain the court records to verify the applicant's statements.

Additionally, the applicant failed to inform the background investigator that he was listed as a suspect on a harassing/threatening telephone call incident and was arrested for vandalism. When confronted with these omissions, the applicant's explanation was that he forgot about them. Regarding the threatening telephone call incident, the applicant stated that he was never contacted by the police and that no charges were ever filed. Regarding the vandalism arrest, the applicant stated that no charges were filed, that the detention was for approximately an hour several years ago, and that he had no knowledge that it was listed in official records as an arrest. There is no documentation in the personnel file that the background investigator conducted any follow up with the involved police agencies.

For almost a year, the applicant was employed as a police officer with a police agency in California. While on probation, he was released from the police agency. During LASD's background investigation, the applicant admitted that his former police agency investigated him five times during his probation. According to the applicant, there were four allegations involving force and one discourtesy complaint, and none of the investigations resulted in discipline. The Department's BIU background investigator confirmed that in a four-month span, the applicant had five separate internal affairs investigations. Four of the investigations involved excessive force allegations, and the other investigation involved a discourtesy complaint that was witnessed by another sergeant on the police agency. Two of the excessive force investigations were unsubstantiated, one was unfounded, and one was founded. The discourtesy complaint was also founded.

In conducting further investigation regarding these internal affairs investigations, the Department's background investigator spoke with several current members of the police agency. LASD's background investigator learned that the founded excessive force investigation involved the applicant putting his knee in the back of a 60-year old woman and twisting her arm, and the founded discourtesy complaint resulted from the applicant yelling profanities at a citizen during

a mediation session.

In the last seven years and before he applied to LASD, the applicant applied to at least nine different law enforcement agencies, including the California police agency that hired him. After his release from his former police agency, the applicant was not selected at seven of the eight other law enforcement agencies and the applicant withdrew from the remaining law enforcement agency. Background investigation records at many of the police agencies were not available because they had been destroyed, and where background records were available, the police agencies stated that the applicant had not been selected or failed the background investigation phase of the process.

With regard to his LASD application, the applicant passed the polygraph. Without any documented concerns, the applicant was recommended for hire and then received a conditional offer of employment.

The applicant then passed his psychological examination.

The applicant was admitted to and graduated from the Academy. While on probation, the applicant demonstrated anger management issues. His supervisors received numerous inmate complaints regarding inappropriate conduct by the applicant and witnessed the applicant lose his temper with inmates on several occasions. With little provocation, the applicant would “blow up at others” or “fly off the handle.” The applicant’s supervisors provided him with a mentor, and after the mentor program, the applicant threw a shoe at an inmate and yelled, without provocation, at other inmates. The Department determined that the applicant did not satisfactorily complete his probationary period and involuntarily separated him from employment.¹⁴

The background investigation in this case was less than thorough. The background investigator failed to conduct follow up investigation (e.g., verify certain information through court documents or contact with arresting agencies) regarding certain of the applicant’s omissions. More importantly, OIR’s review raised questions regarding the suitability of this applicant for hire. The applicant’s release from the California police agency and the number and type of misconduct investigated and founded by that police agency should have provided LASD with a clear warning sign. These issues individually and collectively should have given the Department great pause before extending an offer of employment to this applicant, as numerous other law enforcement agencies had declined to do on earlier occasions.

¹⁴ Recently, at the suggestion of OIR and as a result of direct intervention from the Sheriff himself, Department managers have been instructed to carefully review probationary employees who have troubling performance issues, including comparing those issues with any information derived from the background investigation process. This initiative to treat the probationary period as a time in which the Department places its employees under more exacting scrutiny during their probationary period is a shift from recent practice and laudable.

Case #2:

When the applicant went through the Department's background investigation process, he was 20 years old. Between the ages of 13 and 18 years old, the applicant smoked marijuana on ten separate occasions. According to the applicant, he last smoked marijuana two years before his application. In addition to marijuana, the applicant admitted to using two cycles, or ten to 20 injections, of steroids, a year before his application for the position of deputy sheriff trainee. According to the applicant, he sold the unused portion of the steroids back to the dealer.¹⁵

Within six months of his application for an LASD deputy sheriff trainee, the applicant, while under the state's drinking age, was arrested and convicted for attempting to purchase an alcoholic beverage with someone else's identification. He received a \$400 fine. Within four years of his application to the Department, the applicant had four speeding tickets and another ticket for a stop sign violation. Another sheriff's department apparently disqualified the applicant from its hiring process because the applicant had too many traffic violations.¹⁶

The applicant passed his polygraph examination and received a conditional offer of employment.

According to the applicant, he has been intoxicated 500 times, most recently while he was going through the Department's background investigation process for the deputy sheriff trainee position. The applicant admitted that he had driven while intoxicated, most recently only weeks before he began his background investigation process with LASD.

In response to a question about whether anyone ever called the police on him, the applicant admitted that one year prior to his application, law enforcement officers had responded to his residence because of an argument with his girlfriend. According to the applicant, she would not leave his residence when the applicant asked her to leave. His girlfriend is the stepdaughter of a detective with the responding law enforcement agency, and the detective

¹⁵ This illegal purchase and use of steroids occurred within three years of the application for deputy sheriff trainee, and, pursuant to the Department's standards, should have been automatically disqualifying.

¹⁶ During his initial interview at the beginning of the background investigation process, the applicant stated that he had withdrawn his application with the other sheriff's department in order to apply with LASD. In conflict with the applicant's initial statement, his polygraph answer to this question indicated that the applicant was disqualified from the other sheriff's department for too many traffic violations. The applicant's LASD personnel file contained no documentation from the other sheriff's department to verify whether and, if so why the applicant was disqualified from its hiring process. There is no explanation in the applicant's personnel file regarding the conflicting statements and no evidence of any attempt at following up with the other sheriff's department on this issue.

recommended the applicant for hire. The personnel file contained no inquiry letter sent to the outside law enforcement agency requesting it to conduct a records search of the incident or any follow up other than the interview with the girlfriend's stepfather.

In this case, it appears that BIU had little concern regarding the applicant's recent steroid use, alcohol-related arrest, traffic violations and admitted alcohol abuse. Given these warning signs, there was little follow up regarding the potential impact of these issues on the applicant's ability to function as a peace officer. Two readily available leads that were not pursued during the background investigation were the call for police service at the applicant's residence and the actual reason that the applicant did not successfully complete the application process of the other sheriff's department.

The applicant's case raises the question of whether the Department's standards as interpreted are confusing, whether BIU supervisors are sufficiently reviewing investigations, training investigators, and whether there are adequate mechanisms in place to trigger a supervisor's review of certain applicants' background investigative files. There is no clear indication as to whether the psychologist received sufficient information to interview the applicant about questionable behavior and decisions or whether the psychologist discussed any of the questionable behavior or decisions with the applicant.

The applicant was admitted to and graduated from the Academy. While the deputy sheriff was on probation, he was arrested by an outside law enforcement agency for felony assault. At the time of his arrest, the applicant was tested for alcohol and found to be under the influence of alcohol. The matter is presently proceeding through the judicial system. As a result of the applicant's arrest, the Department relieved the deputy sheriff of duty and suspended his probation pending further investigation of the matter.

Case #3:

This applicant applied to be a deputy sheriff when in his thirties. A review of his application showed that he had achieved a bachelor's degree in education.

The most concerning information derived from the background investigation is the applicant's prior police experience. Approximately ten years prior to the time of his application with LASD, the applicant was hired by a small Southern California police department as a police officer. According to the applicant, while with this department, he was involved in three on-duty traffic collisions, with two of the collisions being found to be preventable. The most concerning incident was one in which he activated his emergency equipment without receiving the proper authorization and ended up losing control of his patrol car and striking the median. The second on duty traffic collision occurred when the applicant rear ended a private vehicle. There was also information from the other police department that a sergeant had documented that the applicant had been answering calls in an unsafe manner. Another issue that arose during the applicant's probationary period with the other department involved his failure to pass baton training.

As a result of the above, the applicant was failed from probation as a police officer and was allowed to demote to jailer. On his first day as jailer, the applicant received a reprimand for speeding. According to the applicant, he was told that he almost struck another police officer during this incident. While a jailer, the applicant negligently allowed a federal prisoner to escape and, as a result was asked to leave his position with the department.

Since his involuntary departure from the police department, the applicant was involved in at least two additional traffic collisions while a private citizen, one in which it was determined that the applicant was at fault.

The background investigation also revealed that since he involuntarily left the police department, the applicant was not able to successfully pass the background investigative process for four other police agencies in Southern California with at least three of them stating the reason being the applicant's earlier termination. The applicant had also previously applied to the LASD, but was not able to pass the background investigative process because of his termination from the other police agency.

In this case, the background investigation was thorough. The employment history is noted in the investigator's summary as an area of concern but there is no further analysis as to why the decision was made to recommend the applicant for hire. Accordingly, the lack of any written analysis leaves the reviewer of the file ignorant about whether the intervening at fault traffic accident or the other disqualifications, including the earlier disqualification by LASD was figured into the ultimate decision to recommend the applicant for employment.

In our view, to extend employment to an applicant who has been terminated from another police agency, no matter how much time has passed, is a perilous decision. Employment as a police officer requires a skill set and strength of character not required in most other employment settings. Persons who can prosper in other work environments simply may not do well as peace officers and the decision by a prior police agency that a particular individual is not cut out for policing should probably never be revisited by a subsequent peace officer employer.

In this case, the applicant passed his psychological exam and graduated from the Academy. While in a custody assignment, the applicant became the subject of a criminal excessive force investigation and was relieved of duty pending the outcome of that investigation.

Case # 4:

When the applicant went through Department's background investigation process, he was 35 years old. When the applicant was 23 years old, he smoked marijuana on three separate occasions. In that same year, he sold the unused portion back to the dealer from whom he originally purchased the marijuana.

The applicant was graduated from high school with a grade point average of 2.26, and from college with a grade point average of 2.09.

A neighboring sheriff's department reported that the applicant was arrested for public drunkenness. The applicant denied the report, and the personnel file showed no further follow-up regarding the contradictory information.

On another occasion, the applicant sustained a conviction for driving under the influence of alcohol. He received a fine and three-year term of probation. Prior to his conviction, the applicant admitted to driving intoxicated ten times. After that conviction, the applicant drove while intoxicated approximately five times with the most recent time being four or five years prior to his application.

Within two years of his application to LASD, the applicant had two traffic violations.

The applicant previously applied for a peace officer's position with several other law enforcement agencies. A police department in Southern California disqualified the applicant on the basis of his driving under the influence conviction and his admitting to subsequent driving under the influence. A different Southern California police department disqualified the applicant in the background investigation phase. Subsequently, on two separate occasions, a third police department in Southern California disqualified the applicant. The second disqualification was because the applicant had omitted his driving under the influence conviction. Finally, a fourth Southern California police agency disqualified the applicant in the background investigation phase. For most of these disqualifications, the BIU investigator received documentation verifying the disqualifications.

With regard to his LASD application, the applicant passed his polygraph examination with concerns regarding the marijuana sale and the driving under the influence conviction.

Subsequently, the applicant was recommended for a clinical interview with concerns and then recommended for hire.

The applicant then passed his psychological examination.

Similar to case #2, the applicant's history demonstrated challenges with alcohol and poor decision-making skills. Although BIU investigators and supervisors in this case recorded some concerns regarding the applicant's alcohol behavior and poor decision making, there is little or no documented rationale in the applicant's personnel file to justify the recommendation to hire him. The applicant's personnel file contains no record of how the Department standards were applied in his case. There is no clear indication whether the psychologist received sufficient information to question the applicant about potentially questionable behavior.

The applicant was admitted to and graduated from the Academy. While on probation, the deputy sheriff was involved in a traffic accident and arrested for driving under the influence of

alcohol. At the time of his arrest, the deputy sheriff's blood/alcohol level was .20, over the legal limit. The matter is presently proceeding through the judicial system. As a result of the deputy sheriff's arrest, the Department determined that the deputy sheriff had not met its expectations during the probationary process and separated him from the Department.

Case #5:

The applicant was graduated from high school with a grade point average of 2.1, and the applicant attended community college, received no degree, and had a grade point average of 3.4. In high school, the applicant was suspended for fighting.

The applicant had his driver's license suspended because he failed to appear in court on a speeding ticket. According to the applicant, he was deployed to a foreign country for military service, and because he failed to appear, a warrant for his arrest was issued. When he returned from his deployment, he went to court and advised the court that he could not pay the fine because of financial hardship. The applicant's license remained suspended for eight years. The BIU investigator obtained documentation showing the eventual payment of the fine.

In the interim, the applicant was stopped by law enforcement for not having registration tabs displayed and, during this traffic stop, was cited for driving with a suspended license and failure to pay a traffic fine.

Subsequently, the applicant was stopped by law enforcement and cited for driving with a suspended license and not having proof of financial responsibility. According to the applicant, the automobile insurance was under his wife's name; however, the applicant's personnel file contained no documentation to verify the applicant's claim.

As part of the background investigation process, the applicant submitted his credit history report, and it showed that the applicant had eight past due accounts. Of the eight, three accounts were in collections as the applicant proceeded through the Department's background investigation. According to the applicant, he received his income solely from commissions. For months, the applicant would not receive payment, and this caused him to fall behind in his bill payments. During the background investigation phase, the applicant represented – even though he did not always provide proof – that he had made arrangements with his creditors to make scheduled payments.

When the BIU investigator inquired of the applicant of any arrests or negative law enforcement contacts, the applicant indicated that there were none. Although the BIU investigator found no arrests in the applicant's criminal history, he found that the applicant had failed to make relevant disclosures. The applicant was honorably discharged from the military. While serving in the military, the applicant received discipline for going absent without leave ("AWOL") according to him, to see an ill relative. The applicant was absent from the military for 90 days until he voluntarily returned. As a result of him going AWOL, the applicant received a reduction in grade and confined to base for 30 days.

When confronted with this information by the background investigator, the applicant indicated that he went AWOL after requesting time off and being denied permission to leave. The reason that the applicant provided for going AWOL was that his relative had raised him. Although the BIU investigator spoke with the applicant's relative regarding other issues, there is no evidence that he spoke to her regarding the applicant's version of the incident. There is also no documentation in the file to indicate whether the military base was contacted to verify the applicant's account of the incident. In short, there is no information in the applicant's personnel file to corroborate (or refute) the applicant's account of this event.

The applicant was listed as a suspect in an embezzlement report with an outside law enforcement agency. According to the police report, the applicant borrowed a friend's car and told him that he would return the car later that day. Although the applicant had repeatedly promised the friend over the next several days that he would return the car, the applicant repeatedly failed to do so and failed to show up at a designated location at an agreed upon time. After four days of this, the applicant's friend contacted the police and filed a report, and even though the applicant expressed to his friend concern about a police report being filed against him, the applicant finally did return the friend's car.

When confronted with this information by the background investigator, the applicant represented that he borrowed the car to take his sick child to the hospital. The applicant denied any knowledge of the police report to the BIU investigator. The applicant admitted to the investigator that he took his friend's car and that he had the car for three days before returning it. While the BIU investigator obtained a copy of the police report, there is no evidence in the applicant's personnel file of any effort to locate and interview the applicant's friend who filed the police report or to corroborate (or refute) the applicant's version of events.

The applicant also acknowledged to the BIU investigator that a restraining order had been issued against him. According to the applicant, he kissed his stepson on the cheek. The biological father witnessed the kiss and became angry. The child's biological father pushed the applicant, and the applicant pushed him back. There is no evidence in the applicant's personnel file that the child's father or judicial records were ever sought to confirm the applicant's version of events.

During the background investigation, the BIU investigator documented his concern regarding the applicant's procrastination and inability to meet deadlines. On seven occasions over a ten-week period, the BIU investigator requested required documents or reports needed to complete the background investigation process. While the applicant made repeated assurances to the BIU investigator that he would deliver the documents and reports by a date certain, he repeatedly failed to do so. At the conclusion of the background investigation phase, there were outstanding documents or reports that the applicant had failed to provide the BIU investigator.

The applicant took the polygraph examination twice. The first examination was rejected because of the applicant's breathing patterns. The applicant attributed the breathing issues to a

lack of sleep the night before the examination. According to the applicant, he had to care for a sick child. Several days later, the applicant passed the second polygraph examination.

While the applicant first listed on the Department questionnaires a number of his tattoos, he did not identify and describe all of his tattoos, including some potentially disturbing ones. During his interview with the background investigator, the applicant disclosed to the investigator that he had an additional tattoo with the words "INSANE" on his person. The applicant indicated that he received this tattoo while he was in the military.

Although there were noted concerns regarding the applicant's procrastination, military discipline, negative credit history and failure to mention the police report regarding the embezzlement incident, BIU personnel recommended the applicant for hire.

The applicant passed his psychological examination.

The background investigation of the applicant was not as thorough as it could have been. Even when there were opportunities to verify explanations provided by the applicant, BIU personnel routinely accepted the applicant's version of events. For example, there is no evidence in the applicant's personnel file that indicates the BIU investigator interviewed the relative about whether she was sick and whether the applicant visited her during that period of time. There is also no documentation that indicates whether the military was contacted to verify the applicant's account of the event.

There is also no documentation that indicates the BIU investigator ever interviewed the "friend" who filed the embezzlement report with the outside law enforcement agency. Although the BIU investigator obtained a copy of the police report and learned who filed the police report, there is no documentation of any effort to speak with the applicant's friend or determine whether there were hospital records that supported the applicant's story that he borrowed the car to take his sick child to the hospital.¹⁷ There was no documented effort to obtain a copy of any documents related to the restraining order that was issued against the applicant or independently learn of the facts resulting in its issuance.

This applicant's history over a length of time demonstrated poor decision-making skills in the employment area, financial responsibility, and law-abiding behavior, and yet, it appeared that insufficient weight may have been accorded these deficiencies.

It is unclear what information the psychologist initially received on this applicant. It is clear that the psychologist did not have access to the applicant's complete personnel file for the background psychological examination.

¹⁷ The "sick child" or "sick relative" justification that was repeated by the applicant at least three times to explain several negative pieces of information raises suspicion on its own about the credibility of the applicant's account of events.

While on probation, this applicant was arrested for felony assault charges. As a result of the arrest, he resigned from the Department.

Case #6:

The applicant was 22 years old at the commencement of his background investigation process for deputy sheriff. The applicant admitted to marijuana use as a teenager.

This applicant passed his General Educational Development test and attended a community college. At the community college, the applicant received six failing grades, had four withdrawals, and achieved a grade point average of 1.5. Several of the courses in which the applicant had a failing grade, he repeated several times.

Within two years of his application to the Department, the applicant had three moving violations.¹⁸

The applicant admitted his arrest and conviction for petty theft. The applicant entered a store with friends and shoplifted goods valued under \$10.00. The court sentenced the applicant to a three-year term of summary probation and ordered to him to pay a \$100.00 fine. The Department's check of criminal databases and law enforcement agencies returned no further reports of arrests or investigations of the applicant.

After the initial screening process, the background investigator submitted the applicant for hire with concerns regarding his arrest, marijuana use, traffic citations, and education, and the applicant received a conditional offer of employment.

At that time, the applicant passed the polygraph examination with concerns regarding criminal activity and employment. The applicant acknowledged for the first time during the polygraph examination that he had stolen food stuffs under \$10.00 from his most recent employer for personal consumption. In the area of employment, the polygraph examiner noted that for a recent three-month period, the applicant worked as an electrician, was paid \$1,000 per month cash, and did not pay taxes on his earnings.

The applicant then voluntarily withdrew from the background investigation process. The applicant stated that he wanted to obtain additional education. For the next ten months, the applicant worked as a kitchen supervisor in a restaurant, and did not seek any additional education. The applicant then requested reinstatement into the Department's background investigation process, and he received a second conditional offer of employment in the same month.

¹⁸ Only two violations appeared on the applicant's DMV printout. The applicant's personnel file showed no further efforts to verify the third moving violation or the date of the violation.

The applicant received a psychological and medical evaluation and passed both evaluations.

The background investigation could have been more thorough, and there is an issue of whether the Department's hiring standards were too amorphous or whether there was insufficient discussion within BIU regarding the appropriateness of recommending this applicant for hire. The background investigation uncovered a number of issues regarding this applicant. The Applicant's history of recent and repetitive thefts raised questions about the appropriateness of recommending him for hire. While the thefts themselves were not of significant monetary value, they occurred within three years of his application for deputy sheriff trainee. In addition, the applicant admitted that he had recently worked off the books with an employer, that he did not declare his income, and that he failed to pay taxes on the earned income. The applicant's personnel file failed to show any evidence of further investigation or independent verification on this possibly criminal activity. There was no request for a recent tax return or confirmation with the employer during the previous employer check.

The applicant was admitted to and graduated from the Academy. While the deputy sheriff was on probation, his captain expressed concerns regarding his suitability as a deputy sheriff. These concerns went unaddressed, and the deputy sheriff completed probation. After completing the probationary period, he was arrested for transportation for sale of a controlled substance. The matter is presently proceeding through the judicial system, and the Department has relieved the deputy sheriff of duty pending a disposition of the criminal matter.

Case # 7:

The applicant had a history of credit issues. These issues resulted in her having a bankruptcy discharged worth approximately \$45,000, and the applicant voluntarily relinquished two cars for non-payment. While the applicant had become current on most her accounts, she still had a high credit card debt balance.

Sixteen years prior to her application, an outside law enforcement agency arrested the applicant for arson to a vehicle. She pled no contest to felony vandalism and received 36 months probation, a fine, and restitution. When the applicant's probation terminated, her conviction was reduced to a misdemeanor. Her conviction was expunged. Approximately eighteen years prior to her application, an outside law enforcement agency arrested the applicant for outstanding tickets and a \$2,000 warrant.

BIU personnel personally contacted the applicant's previous employers and learned that she had been terminated by one employer for repeatedly arriving late to work. According to the applicant, she quit another employer because the manager wanted the applicant to lie about a product. The applicant again quit employment at a subsequent job without giving notice to the employer. According to the applicant, the employer accused her of allowing the news media into the shop without authorization. In another employment position, the applicant quit a doctor's office without giving notice. According to the applicant, the doctor created a hostile work

environment by bringing a gun to the office. The BIU investigator was able to corroborate the applicant's version of the most recent incident involving the presence of a gun in a doctor's office.

The applicant had previously applied with five separate police agencies in Southern California, and all of these agencies disqualified the applicant. The applicant had previously unsuccessfully applied with LASD.

After the initial backgrounds investigation, the applicant passed her polygraph examination.

The applicant subsequently received a conditional offer of employment and then passed her psychological examination.

The applicant was admitted to and graduated from the Academy. Within six months of her graduation from the Academy, the deputy sheriff's captain had concerns about the appropriateness of her hire as a deputy sheriff. While still on probation, the Department received information that the deputy sheriff engaged in conduct that constituted prohibited association with an inmate. The deputy sheriff then resigned from the Department.

While the background investigation in this case was thorough, OIR's review raised issues regarding the suitability of this applicant for hire. While the criminal history, credit problems, and work history issues were dated, the confluence of all of these issues should perhaps have given the Department pause to extend an offer of employment to this applicant, as it and five other law enforcement agencies had refused to do on earlier occasions.

Case #8:

The applicant was graduated from high school with a grade point average of 1.2. For three years, the applicant attended a city college, received no degree, and maintained a grade point average of 2.5.

The applicant had a substantial outstanding debt; however, no significant negative credit responses.

BIU personnel conducted, if at all, a cursory residence check and did not interview many of the applicant's friends. This may have been due in part to the fact that she was a current employee of the Department. The applicant received positive recommendations from Department executives and numerous sworn personnel.

The applicant passed her polygraph examination.

The applicant subsequently applicant received a conditional offer of employment and then passed her psychological examination.

The applicant was admitted to the Academy. While the applicant was in the Academy and during the course of a criminal investigation, investigators discovered known and active gang members referring to the applicant on a wiretap. A subsequent criminal investigation by the Department determined that these gang members socialized with the applicant on a regular basis and that she used her position in the Department to access law enforcement databases to collect and provide information to gang members whom she knew and with whom she socialized. In lieu of the Department terminating her employment, the applicant withdrew from the Academy and resigned from the Department.

The background investigator failed to conduct a thorough residential check of this applicant, including interviewing her friends and former roommate. This case illustrates that even when an applicant is employed by the Department, background investigators need to conduct a thorough investigation.

Case #9

This case involves a deputy sheriff who applied to be reinstated after he resigned from the Sheriff's Department. At the time of his resignation, he indicated that he was leaving the Department to pursue business opportunities

During the background investigation conducted as a result of his application for reinstatement, the Department noted that the deputy had received a lengthy suspension as a result of being involved in a traffic collision in which it was determined that he had failed to yield to oncoming traffic. An internal affairs investigation ensued and it was determined by the Sheriff's Department that the deputy had completed false reports documenting the traffic collision, false statements to a supervisor that the other party was speeding and had failed to yield, and similar false statements to internal affairs investigators. In his personal history, while admitting the suspension, the applicant indicated that the reason for the suspension was the traffic accident alone.¹⁹

The background investigation in this matter was thorough in most respects. The significant suspension was highlighted in the file. However, the background investigator did not apparently discuss the incident with the applicant nor explore his written account of the incident as simply an "accident". This resulted in the Department being entirely uninformed about whether the applicant accepted responsibility for his actions in the previous disciplinary matter. Moreover, the captain and commander who were intimately familiar with the case as the applicant's supervisors at the time were never interviewed by the background investigator regarding the matter.

¹⁹ The deputy had been involved in another prior on duty traffic collision in which he had been adjudged at fault and received minor discipline.

In OIR's view, the reinstatement consideration significantly undervalued the significance of the integrity issues that were central to the background investigation and the applicant was reinstated based on recommendations from Department employees attesting to his honesty and integrity. While there certainly are times where it would be appropriate to reinstate personnel who have left the Department, the decision to do so in this case is suspect. The applicant resigned from the Department while his appeal of a lengthy suspension was still ongoing. The internal charges that formed the basis of the discipline went to the core values of any law enforcement officer, namely his integrity. There is no information in the file that the deputy accepted responsibility for his actions stemming from the disciplinary case.²⁰ Despite this history, the Department set aside these concerns and reinstated the applicant to full deputy status.

VII. "Friends of the Sheriff": An Unfortunate Connotation

At some unknown time, BIU began collecting data on certain applicants for the deputy sheriff trainee position. This collection of data has been commonly referred as the "FOS" list. While "FOS" stands for "Friends of the Sheriff," the Sheriff himself actually knows virtually none of the individuals on the list.²¹ The collection of the data is designed to track these individuals as they proceed through the background investigation process and respond to calls from any Department member that is interested in an applicant's status in the background investigation process. Often, the interested Department members were listed on an applicant's personal history questionnaire or made calls inquiring into the status of a particular applicant.

In analyzing personnel files of a sample of the applicants on the FOS list, OIR has determined that there is no evidence that these applicants routinely receive preferential treatment during the background investigation process.²² If anything, these applicants receive greater scrutiny. As explained by former and current BIU personnel, the greater scrutiny allows BIU to say with confidence to any Department member or employee who asks that a disqualified FOS applicant was not qualified to be a peace officer.²³

²⁰ As proof of this point, once the applicant was rehired, he immediately reinstated his challenge to the earlier imposed suspension proving that he, in fact, has not accepted responsibility for his actions in the disciplinary case.

²¹ The FOS list might more aptly be titled "Applicants Who Know Someone on the Sheriff's Department."

²² As detailed below, there is evidence, however, to indicate that at least one FOS did receive differential treatment with regard to being provided an additional opportunity to test with an additional psychologist after having been disqualified by the first one.

²³ While the Department may have arguably legitimate reasons for tracking separately those applicants who have an association with a Department member and while these FOS applicants may, in fact, undergo closer scrutiny in the background investigation process, the separate tracking of FOS applicants arguably creates the appearance of favoritism during the

VIII. The Psychological Evaluation Process: The Need for Independent Assessments

As noted above, the Department contracts with independent psychologists to conduct the psychological evaluations of its deputy applicants. From 1983 to 2002, the Department contracted with only one psychologist to conduct evaluations of its applicants. About six years ago, in part because of what was perceived by the Department to be too high disqualification rates of the sole contract psychologist and complaints from applicants²⁴ and Department members about the psychologist, the Department added two additional contract psychologists.²⁵ From 2002 to 2007, the Department used the same three contract psychologists.

Prior to his or her psychological evaluation, the applicant for deputy sheriff trainee takes a personality test, the Minnesota Multiphasic Personality Inventory (“MMPI”). Along with the MMPI results, the psychologist receives a packet of information from the applicant’s personnel file. Without assistance from the psychologists, BIU typically prepares this information packet and forwards it with the MMPI results. During its review, OIR had concerns about whether this practice of BIU forwarding only partial information to the psychologist was a best practice. There is nothing in the current training that BIU personnel receive that would qualify them to determine and appropriately select what information a psychologist would need to make an adequate assessment of an applicant. During interviews with contract psychologists and BIU personnel, there was no persuasive argument advanced for why the psychologists should not receive the entire personnel file.²⁶

OIR has been informed that prior to the major BIU personnel changes in 2006, the contract psychologists and BIU supervisors and background investigators communicated often and informally about certain applicants and issues relating to the applicant’s background and suitability for the position of deputy sheriff trainee. Former BIU personnel stated that a consequence of the BIU personnel changes in 2006 was a reduction in the frequency of that

application process.

²⁴ Historically, the Department has not had a well-defined system for maintaining or dealing with applicant complaints against psychologists. Since OIR began this project, there has been at least one complaint regarding a current contract psychologist, and pursuant to OIR’s suggestions, the Department has begun to document and maintain such complaints.

²⁵ According to one contract psychologist, an outside commission recommended the Department have more than one contract psychologist conducting the psychological evaluations of applicants.

²⁶ After discussions with OIR, BIU recently changed this procedure, and now it provides the entire personnel file to the contract psychologist conducting the psychological evaluation of the applicant.

informal communication. Two of the contract psychologists acknowledged that they had witnessed changes in how BIU communicated with them and conducted its background investigations and that in more recent years BIU personnel provided less information to the psychologists regarding applicants. The psychologists opined that much of the decrease in information to them may be attributable to the increase in the volume of applicants proceeding through the background investigation process and the resulting increased demand on the background investigators' time.²⁷

OIR's analysis of its sample of cases supported the findings reached by the County of Los Angeles Auditor-Controller (the "Auditor-Controller") and submitted to the Board on May 6, 2008. OIR's analysis demonstrated no meaningful difference in the disqualification rates of the three contract psychologists who conducted psychological examinations on applicants for deputy sheriff trainee.²⁸ Our review did find however, that each psychologist used different tools to elicit information from and communicate with deputy sheriff trainee applicants.

A. LASD Deviations from the Psychological Disqualification Appeals Process

When an applicant is disqualified from the background investigation process, there is an established appeals process that the disqualified applicant can pursue. Under that process, the disqualified applicant can elect to wait a year and then re-apply to take the written examination for the position of deputy sheriff trainee or file a formal appeal in writing with the County's Department of Human Resources. When an applicant has been disqualified after a psychological evaluation, he or she can request through a formal appeal a second psychological evaluation. Typically, the applicant incurs the expense for his or her own psychological evaluation, submits those independent results to the Department of Human Resources, and requests the County of Los Angeles conduct a third psychological evaluation of the applicant. Under these circumstances, the county psychologist who conducts the third psychological evaluation is not one of the psychologists under contract with the Department.²⁹

In 2006, however, two cases involving different applicants who were disqualified by contract psychologist A in the background investigation process proceeded through a unique appeals process. First, pursuant to regular protocols, BIU assigned contract psychologist A to perform the psychological evaluations. However, when psychologist A disqualified both applicants, the BIU lieutenant scheduled each applicant to receive a second psychological

²⁷ Personnel Bureau authorities have represented that this formalization of communications was designed to avoid manipulation of the process.

²⁸ However, as discussed in greater detail below, at least one psychologist had significant fluctuations in disqualification rates over time.

²⁹ The Auditor-Controller's results showed no statistically meaningful difference in the rejection and appeals reversal rates between the three contract psychologist on appeal.

evaluation. The second psychological evaluations were conducted by psychologist B, who was another psychologist under contract with the Department, not a county psychologist. Neither applicant was required to retain his or her independent psychologist and present those results to the Department or county. Neither applicant was required to file a formal appeal with the Department of Human Resources. The personnel files of the involved applicants contained no documentation noting the Department's decision to schedule each applicant a second psychological evaluation, or an explanation for the deviation from established procedure. Former and current BIU personnel stated that the deviation occurred because the Department had received numerous complaints from disqualified applicants, academy admitted applicants, and Department members regarding psychologist A. As a result, BIU personnel decided to informally arrange the "second chance" psychological examinations for these two applicants.

In further regard to these two cases, in case X, the applicant was on the FOS list and knew two LASD members, including a very high ranking Department executive. The sergeant who reviewed the case X applicant's file initially recommended that the Department not hire the applicant. The case X applicant's file showed no indication that he had received two psychological examinations, the first one disqualifying him and the second one finding him acceptable.

In case Y, the applicant was not on the FOS list and knew no Department members. The sergeant who reviewed case Y applicant's file initially recommended that the Department hire the applicant. The case Y applicant's file also showed no indication that he had received two psychological examinations, with both psychologists disqualifying him.³⁰

From interviews and document reviews, OIR found no evidence that Department members pressured BIU to deviate from the established appeals procedures in these two cases. While these two cases are clearly deviations from the standard Department processes, there is no written Department or county policy that prohibits this unique appeals process. That being said, the arguable special treatment afforded the two applicants in these cases suggest the need for uniformity with regard to how all psychologically disqualified applicants' appeals are handled.

B. Communications with Psychologists Regarding Disqualification Rates: Significant Implications for the Integrity of the Process

OIR questioned all three psychologists who provided or continue to provide psychological evaluations to applicants for the Department's deputy sheriff trainee position

³⁰ Neither personnel file in case X or case Y contained any detailed explanation relating to: (1) the lieutenant's decision to support to overrule the BIU sergeant's recommendation to hire or not; (2) psychologist A;s decision to disqualify the applicant; (3) the lieutenant's decision to forward the applicant to psychologist B; (4) how or why psychologist B was selected to conduct the second psychological evaluation; and (5) the basis for psychologist B's decision to disqualify or not disqualify the appellant after the second psychological evaluation.

about whether they received from Department executives any pressure to not disqualify applicants whom they found unfit to serve as peace officers. Two of the contract psychologists indicated that they felt no pressure from the Department regarding how they conducted their evaluations or whom they found qualified to proceed to the Academy. One contract psychologist indicated that she or he had felt pressure from the Department on these issues. Each psychologist acknowledged that, on occasion, Department representatives had spoken with them regarding their disqualification rates and indicated that the Department was placing greater emphasis on the application of its standards for applicants in a “holistic” manner. Each psychologist interpreted “holistic” to mean that one or two questionable factors in an applicant’s background should not necessarily be given too much weight and that if an applicant was “sitting on the fence,” the Department wanted the contract psychologists to not disqualify the applicant and let the applicants “filter out” later in the process. The psychologists, however, firmly believed that they retained the authority and ethical obligation to disqualify, or “screen out,” those applicants found unfit to serve as peace officers.

OIR learned of an allegation that the Department had pressured one psychologist to manipulate his or her disqualification rates. The psychologist admitted succumbing to this pressure and increasing the percentage of applicants that he or she deemed qualified to be a deputy sheriff. While the Auditor-Controller found no statistically significant difference in the disqualification rates between the three contract psychologists, there is indicia that this psychologist’s disqualification rates did vary significantly on an annual basis from 2003 to 2007, arguably suggesting that he or she had received a message to increase his or her pass rates. In addition, the statistics from the Auditor-Controller study showed that as this psychologist’s pass rates increased, so did the work assigned to him or her.³¹

While OIR has no direct evidence to establish that the Department pressured this psychologist to increase his or her pass rate of applicants for deputy sheriff, the fluctuation of his or her pass rate over the years and the allegation itself are certainly alarming. In some ways, the Department’s communications to the other psychologists that it did not want applicants who were “on the fence” psychologically to be disqualified may only be a matter of degree with regard to attempts to influence the results of the psychological testing. What this illustrates is that the Department’s communications to its contract psychologists about how they systemically determine who is fit to be a deputy sheriff are fraught with peril. This is particularly so when the psychologists are serving on a contract basis and at the complete behest of the Department. Because the Department currently holds all of the cards with regard to how much, if any work, is to be given to a psychologist, any communication registering concerns about pass rates, no matter how subtle, could potentially compromise the integrity of the process.

Thus, the Department is placed in a difficult dilemma should it find that one or more of the contract psychologists have pass rates that, in the Department’s view, are unacceptably low.

³¹ Ironically, the Department used the fluctuation of the psychologist’s pass rates as one of the reasons to terminate the contact with him or her.

Certainly, there may be times in which such a concern may be legitimate, particularly if one psychologist's pass rates are not commensurate with other contract psychologists. However, if the Department feels constrained to register a concern about pass rates – rather than contacting the psychologist directly – a better practice may be to communicate that concern to a third disinterested party who can assess the concern and consider any appropriate response. As shown from this review, any direct approach or communication can easily lead to a psychologist feeling pressure to compromise assessments in order to appease the Department.

OIR also received information that a contract with one of the psychologists ended in part because the psychologist had disqualified an applicant who was related to a high ranking LASD executive.³² While there were other potentially legitimate reasons offered for reducing the psychologist's caseload and eventually not renewing his or her contract, the allusion to this reason as supporting, even in part, the reduction and eventual elimination of work is even more disturbing.³³ If a psychologist cannot perform his or her assessment of any applicant free from interference or criticism from the Department, the assessment mechanism could well be corrupted. In this case, the communication to the psychologist that he or she had lost work because he or she had disqualified someone with close personal ties to an executive could be interpreted as a directive that psychologists must treat those individuals differently. Moreover, of course, to state to the psychologist that his or her disqualification of this applicant with "special" ties to a Department executive is more egregious than any disqualification of any other applicant undermines the principle that psychologists should assess the applicant based on the mental health testing results, interviews, and other objective criteria, not because of any special

³² OIR eventually learned that this applicant was not a relative of the high ranking executive but a close friend of the executive.

³³ In addition to this reason allegedly being offered as a reason for ending its relationship with the psychologist, the Department alleged that the psychologist was biased against applicants from certain ethnic groups, applicants who had military experience, and applicants with family in law enforcement. The Auditor-Controller found that while there were variances in ethnic group pass rates among the psychologists, they did not demonstrate inappropriate passing or failing by any of the psychologists. Because the Department provided no data regarding military experience or family members, the Auditor-Controller could neither confirm nor refute those allegations. The Auditor-Controller also reported that current and former Department executives expressed concerns during interviews about the psychologist having a bias against certain applicants, as well as a concern about the psychologist's unprofessional demeanor and interviewing style, but there again was no data or documentary material provided to support those claims.

OIR received further information from the Department about the psychologist in question that parallels many of the concerns forwarded to the Auditor-Controller. However, save for a few anecdotes about a handful of applicants who complained of the psychologist's demeanor and interview techniques, most of the information is general, dated, and not well documented.

connection to a Department member.

Accordingly, mechanisms need to be devised to protect the independence of the contract psychologists. Department managers should refrain from direct communications to psychologists about their pass rates. In addition, the determination of how many applicants are assigned to psychologists should be based on objective criteria.³⁴ In other words, the Department should neither be able to reward with more work those psychologists who provide it agreeable pass rates nor punish those who are not.³⁵

IX. Recommendations

With respect to its internal guidelines, OIR makes the following recommendations to the Department:³⁶

1. Document the reasons for any modifications to the internal guidelines;³⁷
2. Document any changes in the suggested interpretations of the internal guidelines;
3. Have a task force with members from Personnel Bureau, BIU, and OIR re-examine the internal guidelines and suggested interpretations every 24 months and make any necessary and appropriate recommendations; and
4. Have the review committee consider and develop for the Department's consideration a list of categories of negative information about applicants that would result in automatic disqualification of the applicant.

³⁴These recommendations should not be interpreted to mean, however, that feedback from psychologists to the Department about the qualifications of a particular applicant should be suppressed or discouraged, to the contrary, such feedback should be encouraged.

³⁵This is not to say that the Department should be prohibited from receiving complaints and conducting appropriate follow up on allegations of disparate treatment, discourtesy, or any other allegations of misconduct or lack of professionalism by contract psychologists. This is also not to say that such a pattern of complaints or misconduct could not be a legitimate basis for ending the contractual relationship with such a psychologist.

³⁶The recommendations here are numerous and vary in degree of import. Moreover, we feel it important to say that these recommendations are intended to improve a unit that already has exemplary leadership, a professional sense of mission, and dedicated supervisors and employees.

³⁷The Department currently memorializes in writing its revisions to its internal guidelines for hiring deputy sheriff trainees; however, it does not reduce to writing the rationale or the changes or suggested interpretation of the changes. By doing so, it would help to minimize confusion among the background investigations and their supervisors and contract psychologists and ensure that applicants are viewed and evaluated similarly.

With respect to staffing for BIU investigator and supervisor positions, OIR makes the following recommendations to the Department:

1. Require attendance at either a formal training course or create a formal internal training course, with an agreed upon curriculum relative to conducting background investigations to complement the informal “mentor” training program;
2. Maintain records of all formal training received by background investigators and supervisors;
3. When making BIU assignments, require that the background investigators and supervisors have investigative experience;
4. Find ways to provide incentives to attract personnel with investigative experience to the BIU such as designating the BIU investigator positions as bonus positions;
5. Require that the contract background investigators attend the formal training course in background investigations and some recurrent training once every 24 months; and
6. Require that BIU maintain a cadre of, or bench of experienced, investigators and supervisors, even during the non-peak hiring years.

With respect to the background investigation process, OIR makes the following recommendations to the Department:

1. Require all applicants to provide photographs of all tattoos;³⁸
2. Circulate copies of photographs of tattoos to persons involved in the applicant’s medical evaluation and psychological evaluation;
3. Require the background investigator to discuss the origin, meaning and dates of acquisition of all tattoos;
4. In non-obvious cases, submit photographs to Department experts for analysis, including affiliation or association any prohibited organization or group referenced in the required personal history questionnaire;
5. Require applicant to provide investigators access to their MySpace or Facebook pages and make such access a routine investigative step for investigators to follow;
6. Require applicant to submit tax returns for three years preceding application for the position of deputy sheriff trainee;

³⁸ BIU should standardize its requirement that applicants provide photographs of all tattoos before the medical and psychological evaluations or conditional offers. These tattoos should be analyzed for inappropriate associations and discussed with the applicants. Currently, the Department requests information relating to the existence of tattoos and photographs of tattoos. While some applicants provide photographs, most applicants in the reviewed personnel files did not.

7. Require background investigators to obtain, or document efforts to obtain documents that verify or refute an applicant's explanation of his or her criminal or potentially criminal behavior or any issued restraining orders;
8. Require background investigators to interview, if available, all persons who could corroborate or refute an applicant's explanation of acts of violence or acts that could disqualify the applicant under the Department's internal guidelines;
9. Require background investigators to meet personally with an applicant's local employers from at least the last three years and to conduct telephone interviews with non-local employers;
10. Require background investigators to interview, or document attempts to interview, victims of applicant's criminal conduct or requesters of issued restraining orders;
11. Require background investigators to record their interviews with applicants;³⁹ and
12. Require background investigators to obtain a copy of all court documents – other than Department of Motor Vehicles traffic violations – showing charges, allegations, dispositions, and/or orders.⁴⁰

With respect to the supervisory review of completed background investigation files, OIR makes the following recommendations to the Department:

1. Ensure that background investigations meet POST requirements;
2. Ensure that background investigations meet the Department's internal guidelines and interpretations of those guidelines;
3. Ensure that background investigations are thorough and provide the necessary follow-up investigation or inquiry;
4. Ensure that background investigations are consistent with formal training elements;
5. Audit background investigations to identify any trends or patterns of deficient

³⁹ The recording of applicant interviews is recommended by POST. For the Department, it could be useful in resolving integrity issues that frequently arise when applicants dispute or change their accounts of admissions or omissions of details to background investigators. Moreover, recorded statements may assist the Department's analyses of certain categories of applicants before recommending them for hire or in post-hire discussion, and internal audits of deputy sheriffs on probation and their background investigations. Finally, the tape recording of interviews would be critical information when, as has occurred in the past, the Department has been informed that an applicant who has been subsequently hired may have provided false statements during the background investigation process. While this recommendation will require an original outlay of resources for investigators, namely digital tape recorders, in OIR's view, this resource dedication would be well worth the cost.

⁴⁰ The court documents would include charging documents, complaints, judgments, criminal minutes, and/or restraining orders.

- investigations or any investigators in need of additional training or supervision;⁴¹
6. Ensure appropriate communication with contract psychologists and ensure that any additional information is provided to the contract psychologist;
 7. Ensure that the BIU lieutenant reviews the entire personnel files of all applicants recommended for hire;
 8. Review, maintain, and conduct appropriate follow up with regard to all individual complaints by applicants and Department members regarding the background process in general, background investigators, background supervisor, BIU staff, and/or psychologists;
 9. Require the delivery of the entire completed background investigation file to the contract psychologist assigned to conduct the psychological evaluation;⁴²
 10. Conduct group or roundtable discussions on applicants who are recommended for hire or a clinical interview with concerns or applicants who have been disqualified or rejected by more than two law enforcement agencies, and participants in this discussion should include the background investigator or his or her supervisor and a representative from Court Services Division, Custody Operations Division, Leadership and Training Bureau, and OIR;⁴³
 11. Assist, if appropriate, other Department units or bureaus in reviewing all background files of deputy sheriffs who are on probation and, at the deputy sheriff's six-month point of probation, consult with their unit commander regarding in any issues or concerns;
 12. Assist, if appropriate, other Department units or bureaus in reviewing all background files of deputy sheriffs who are on probation and become the subject or witness in an administrative investigation or a suspect in a criminal

⁴¹ BIU should document its audits and any detected trends or patterns.

⁴² In or about early November 2008, and after discussions with OIR regarding the delivery of information to contract psychologists, BIU began delivering the entire completed background investigation file to the assigned contract psychologist.

⁴³ Prior to 2006, BIU's background investigators use to have a greater say in whether a particular applicant should be recommended for hire. However, having the investigator justify his or her recommendation to hire or not might decrease the number of deficiencies in the background investigations. Background investigators could potentially be accountable earlier in the process and/or the career of an applicant.

OIR has also learned that LASD has recently re-instituted its Commander's Applicant Review Panel. The panel reviews "borderline" applicants with the identities of the applicants redacted and makes a determination whether these applicants should move forward in the application process. To the degree that a greater number of persons are scrutinizing these applicants and to the degree the Panel is making principled and consistent recommendations, OIR supports this decision.

- investigation and consult with their unit commander;
13. Document, if appropriate, LASD unit commanders' concerns regarding applicants for the deputy sheriff trainee position or deputy sheriffs on probation and document the Department's actions taken in response to those concerns or reasons for the Department's failure to act on those concerns;
 14. Issue a directive intended to insulate contract psychologists from being contacted directly by LASD staff about disqualification rates;
 15. Arrange, by a neutral party or person, for an audit of the contract psychologists every two years, including individual complaints, disqualification/pass rates and any evidence of bias;
 16. Draft policy and/or procedures for a neutral and non-discretionary assignment of applicants to contract psychologists for psychological evaluations;⁴⁴
 17. Draft policy and/or procedures requiring that a request for any deviation in the assignment of an applicant for a psychological evaluation must be in writing setting out principled reasons and approved by the captain of Personnel Bureau and that a copy of that written request and approval be maintained in the applicant's personnel file;⁴⁵
 18. Draft policy and/or procedures requiring that a request for any deviation in the appeals process for a disqualified applicant must be in writing setting out principled reasons and approved by the captain of Personnel Bureau and that a copy of that written request and approval must be maintained in the applicant's personnel file; and
 19. Conduct internal quality assurance audits of a deputy sheriff's background investigation and personnel file within three years of deputy sheriff's involuntary separation from the Department to determine any trends or background patterns that could improve the background investigation process.

X. CONCLUSION

This report is intended to provide a reminder of the importance of the traditional gatekeeper function of the background investigation process. OIR is appreciative of the

⁴⁴ Rather than assigning contract psychologists to conduct evaluations on the basis of geography, BIU should consider making such assignments on a rotational basis. This would result in a more even distribution of assignments, allow different background investigators to work with different contract psychologists, and lessen the perception held by some applicants and Department members that BIU manipulates the assignments.

⁴⁵ Generally, BIU sent applicants to particular psychologist based on geography of the applicant and the psychologist. There have been a few instances where there was reassigned of a psychological evaluation between contract psychologists because of complaints about one particular psychologist. Without any documentation of the reassignment or the reasons for such reassignment, there may be an appearance of impropriety in those reassignments.

assistance of the BIU, without whose cooperation this review could not have been accomplished. Moreover, to the degree that this report is perceived as critical of the decision-making processes of Departmental personnel, OIR has no reticence in restating that the day to day work product of the BIU and its leaders is of professional quality. Moreover, as also stated here, the motivation, good will, and professionalism of the BIU were features OIR consistently observed during this review. OIR's findings and recommendations that emanated from this review should not be viewed except in the context stated here and are made in the spirit of reform and improvement rather than criticism for criticism's sake. OIR's past experience with the Department assures us that the report will be taken in the spirit in which it has been offered and look forward to continuing to work with the Department to improve its already elevated quality of service.

Please do not hesitate to contact us if you have any questions regarding any matter discussed in this report.

Very truly yours,



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