

**SUPREME JUDICIAL COURT
TASK FORCE ON HIRING IN THE JUDICIAL BRANCH**

**ACTION PLAN FOR REFORM AND RENEWAL OF
PROBATION DEPARTMENT
HIRING AND PROMOTION PRACTICES**

FEBRUARY 10, 2011

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The Task Force on Hiring in the Judicial Branch¹ was appointed by the Supreme Judicial Court on December 7, 2010, with a mandate to "make recommendations designed to ensure a fair system with transparent procedures in which the qualifications of an applicant are the sole criterion in hiring and promotion" in the Probation Department and throughout the Judicial Branch. The extensive corruption of Probation hiring and promotion detailed in the Ware Report² led us to focus immediately on recommendations for measures designed to restore and maintain the integrity of a hiring and promotion process that was once the Department's hallmark. In our Preliminary Report dated January 19, 2011, we made several recommendations for immediate action, i.e., prompt appointment of an Acting Commissioner of Probation with a fixed two-year term; prompt resolution of the status of the suspended Deputy Commissioners of Probation coupled with prompt filling of vacancies appearing at the Deputy Commissioner level; prompt implementation of a hiring and promotion process that complies with national best practices; and prompt filling of other leadership positions but not until the best practices were in place. Since then, Ronald P. Corbett, Jr., has been appointed Acting Commissioner with a two-year term, two of the suspended Deputy Commissioners have resigned and a disciplinary hearing with respect to a third has been completed.

We ended our Preliminary Report by saying that we anticipated "making additional detailed recommendations regarding the Probation Department in the near future." This Report contains those recommendations and the reasons for them. We begin by describing the nature of Probation services provided in the five Trial Court Departments that have an intensive Probation presence. We then recommend that

¹ Task Force members are listed in Attachment A.

² Paul F. Ware, Esq., Report of the Independent Counsel (2010).

Probation hiring and promotion utilize seven industry proven best practices for recruiting and present a plan for implementing those practices rapidly and efficiently. To provide those practices and that plan with the support they need to flourish, we also recommend structural changes designed to provide more effective oversight of and greater transparency in the Probation hiring process. Finally, we explain why a civil service approach to hiring and promotion in the Department is unlikely to yield satisfactory results.

The conclusions we have drawn and the recommendations we have made are based on the extensive series of interviews we have held,³ the materials we have reviewed⁴ and our own knowledge and experience. We are particularly grateful for the thoughtful observations and ideas provided by the people who took time to meet and share their insights with us.

I. Probation's Functions and Responsibilities

Sound hiring and promotion practices in any organization are mission driven and must be designed to insure that the organization is staffed by employees with the skill and energy that are critical to the organization's success. Sound recommendations regarding hiring and promotion in the Probation Department must, therefore, take into account Probation's core mission and the essential skills and attributes Probation officers must have if they are to carry out that mission successfully.

Reduced to essentials, Probation's core mission involves providing assistance to people in crisis. But the kinds of crises and the skills Probation officers must have in order to meet them are not fungible and vary from court to court. Because that variety has an impact on the competencies and qualifications Probation officers must have if they are to deliver the varied services required in each court, a brief look at the nature of those services is appropriate.

In the Superior, District and Boston Municipal Courts, the crisis faced by those in need of Probation services typically flows from criminal conduct. In these courts, as Acting Commissioner Corbett told the Legislative Executive Reform Working Group

³ The individuals from whom we heard are listed in Attachment B.

⁴ The primary documents we reviewed and on which we relied are listed in Attachment C.

(“Working Group”), Probation officers function as both “cops and counselors” as they work to reduce recidivism and enhance compliance with court orders,⁵ although, as we explain below, they do so in different ways. In the Juvenile Court, the crisis often flows from conduct that would be criminal if engaged in by an adult but just as often flows from family dysfunction and the myriad problems poverty and lack of education can spawn in a family setting. And in the Probate and Family Court, the crisis typically flows from the difficult emotional and financial issues that often attend dissolution of a family through divorce.

When criminal conduct is involved, Probation’s crisis intervention primarily takes the form of measures designed to reduce reliance on expensive incarceration and to implement corrective measures that promote rehabilitation and reduce the risk of recidivism. Those measures involve providing close supervision and individual guidance for offenders who are sentenced to a probationary term. The measures are based on the law and on specific facts involving the individual offender. They are designed to be both tough and smart about achieving outcomes that advance the goals of public safety, fiscal efficiency and evidence based risk and outcome assessments. The early intervention, treatment and intermediate sanctions available through Probation services create the most appropriate continuum for the vast majority of offenders at various court levels and thereby provide the best and cheapest form of public protection as well.

Equally important, though, Probation officers act as trusted advisors to the judge who is handling the case to help him or her design and impose probationary conditions that are most likely to help the offender avoid both incarceration and re-offense. Indeed, the bulk of the Probation officers’ work in all court departments involves offenders whose sentences do not include time in a prison or jail and a very large majority of all offenders under probation supervision are in that category.

Last year, in the Superior Court, where the Commonwealth's most serious criminal offenses are resolved, twenty percent of the convictions resulted in a probationary sentence without any accompanying term of incarceration. Those sentences are designed to provide the structure and assistance that advance public safety by helping

⁵ Legislative Executive Probation Reform Working Group report at 4 (2011) (“Working Group Report”).

the offender avoid incarceration and the enormous public and private costs incarceration inevitably produces. Another forty-one percent of the Superior Court convictions involved some period of incarceration followed by a probationary term. Those so-called “from and after” sentences are designed to provide the rehabilitative structure and services that will help offenders avoid re-offense and the longer periods of incarceration re-offense is likely to produce.

In the District and Boston Municipal Courts, incarceration avoidance through compliance with conditions of probation is the primary focus of Probation services.⁶ In those courts, though, the nature and volume of the crimes involved is distinctly different from the nature and volume in the Superior Court, with the consequence that Probation officers are called upon to provide somewhat different services. During the last year, for example, 5,700 criminal cases were pending in the Superior Court, a caseload that has remained essentially static over the past several years. By contrast, over 200,000 criminal complaints, many containing multiple counts, were filed in the District Court during the same period. The primary criminal business of the District and Boston Municipal Courts involves lower-level offenses and a far greater proportion of first-time offenders than are found in the Superior Court. Moreover, each of the sixty-two separate divisions of the District Court and the eight separate divisions of the Boston Municipal Court has deep roots in the community where the courthouse is located and deals on a daily basis with the local police and various social problems affecting the local community. As a consequence, effective Probation officers must be actively involved in and familiar with the community, knowledgeable about the kinds of problems that affect the community, e.g., gangs or particular forms of drug abuse, and well-acquainted with the kinds of social services community-based organizations are capable of providing. That kind of community knowledge makes the Probation officer a critically important source of

⁶ Historically, Probation officers have been keenly aware of the critical role they play in helping probationers avoid incarceration. As one long-time Probation officer told us, when a probationer fails to comply with the terms and conditions of probation to the point where the officer is forced to “surrender” him and recommended to the judge that he be incarcerated, the first question the Probation officer and his or her supervisors were likely to ask was “where did we fail”? Under Commissioner O’Brien’s tenure, as another senior Probation officer stated, that kind of introspection was often replaced by an attitude of “tail ‘em, nail ‘em and jail ‘em.”

information for the judge to use when fashioning the terms of probation, execution of which the Probation officer will then supervise.

Probation officers in the Juvenile Court have a supervisory role similar to that of Probation officers in the District and Boston Municipal courts with respect to juveniles convicted of what would be criminal behavior if engaged in by adults. But because they are dealing with juveniles and because the Juvenile Court has jurisdiction over problems that are not criminal in origin, such as Children in Need of Services (CHINS), see G.L. c. 119, §§ 21, 39E et seq., and Care and Protection proceedings, see G.L. c. 119, §§ 24-27, Probation officers in the juvenile court typically deal with the offender's family, teachers, counselors, social workers and others. As one person familiar with operation of the Probation services in the Juvenile Court told us, that holistic approach is designed to provide the judge responsible for the case, whether criminal or civil, with recommendations designed to fix the problems the juvenile is having, often in the context of a family with few, if any, resources that is incapable of taking the steps necessary to address the juvenile's problems or that is unwilling to do so.

Finally, Probation services in the Probate and Family Court focus on a type of crisis that is completely different from that faced by criminal offenders in the Superior, District and Boston Municipal courts and is somewhat different from the crisis that affects juveniles who appear in the Juvenile Court. Before the arrival of former Commissioner O'Brien, Probation officers in the Probate and Family Court were called Family Service Officers, a description that far more accurately describes their functions and responsibilities.⁷ Individuals involved in divorce proceedings typically are required to see Probation officers when there is a dispute involving the custody of children. In those cases, the officers conduct investigations that focus on the welfare of the child and help the husband and wife build bridges that will allow them to deal effectively with post-divorce custodial arrangements. In the Probate and Family Court, in sum, Probation officers provide dispute resolution and counseling services designed to help those

⁷ Indeed, several knowledgeable observers told us that litigants who appear in the Probate and Family Court seeking a divorce frequently wondered what they had done wrong when told that they had to see a Probation officer and often had to be convinced, sometimes with difficulty, that the "probation" services in the Probate and Family Court had nothing at all to do with wrongdoing. The "probation" label itself, in the view of those observers, was a substantial impediment to acceptance of the services Probate and Family Court Probation provides.

involved in a divorce work together to help their children cope successfully with the emotionally wrenching and enormously difficult family disruption divorce produces.

The diverse and challenging roles Probation officers play in the various Departments of the Trial Court and the broad range of services they are required to provide require skill sets, competencies, strategies and even missions that, although directed at the overall goal of public safety, differ dramatically from those required in the Department of Correction, the Parole Board and even Community Corrections. In other words, Probation is a complicated, layered system, the continued effectiveness of which requires modern, sophisticated hiring, recruiting and promoting tools and skills. The need to create those modern, sophisticated tools and skills lies at the heart of the recommendations that follow.

II. Recruiting Best Practice

Design of a hiring and promotion process that will produce probation officers capable of supplying the right kind of assistance in the right setting is a task the Probation Department itself faced many years ago. On March 1, 1989, then Chief Administrative Justice Arthur M. Mason promulgated Administrative Order No. 4, which was designed to provide standards for filling the office of Chief Probation Officer. Last amended on May 2, 1997, the standards remained in ostensible use throughout the tenure of former Commissioner O'Brien although, as the Ware Report revealed, under his tenure they in fact camouflaged a thoroughly corrupted appointment process.

Over the years since Administrative Order No. 4 was last updated, many advances have occurred in the design of effective hiring and promotion processes for public and private organizations, including probation departments throughout the country. As part of our inquiry, we asked two seasoned human resources (“HR”) consultants who work in the private sector and who serve the Task Force on a pro-bono basis⁸ to identify current and commonly-accepted best practices for hiring and promoting high quality employees and to determine the extent to which those practices were employed by three highly regarded probation departments, those in Connecticut, Michigan and Maricopa County, Arizona.

⁸ Kathleen Donovan, Managing Director, Manpower Business Solutions, who is a member of the Task Force, and Adriel Cueva, Solutions Consultant, Manpower Business Solutions.

The consultants identified seven essential best practices and then determined that five of the seven were in place, in whole or in part, in Connecticut, and all seven were in place, again in whole or in part, in the other two departments. Based on the research performed by the consultants, we believe that those seven practices are essential ingredients of an effective hiring and promotion system and that they should be implemented promptly in the Probation Department as rapidly as possible.⁹

The seven principles are these:

- 1. Well Defined Mission Statement** – An organization’s well defined mission statement is an essential tool for attracting candidates aligned with the organization’s mission. It is also a powerful screening tool that helps to focus those responsible for hiring on whether a candidate’s background is compatible with the mission. The background should include evidence in the applicant’s work history and personal interests that he or she is well suited for the culture of the organization and will further the organization’s stated goals. That initial search for compatibility has proven to be particularly important in probation departments that are evolving from a heavy reliance on a background of police work toward a greater social service orientation. In those evolving departments, the mission statement has proven to be an effective part of the department’s effort to recruit high-quality compatible candidates.
- 2. Job Descriptions/Job Competencies** – It is essential to have current job descriptions that reflect the organization’s overall mission and that describe the role, requirements and essential measures for success in the position. Even better are job descriptions that outline the demonstrated “competencies” required to fulfill all aspects of the role. For example, job competencies might include “highly developed analytical skills” or “strong relationship building skills.” Effective job descriptions have also evolved to focus on accountabilities and expected outcomes. By articulating competencies,

⁹ We recognize that implementation of some of these principles may require approval of the Advisory Committee on Personal Standards and some may have collective bargaining implications. Nevertheless, we recommend that they be implemented as quickly as is possible.

accountabilities and expected outcomes for the role, it becomes easier to evaluate candidates with the right attributes for success.

- 3. Multi-Channel Sourcing of Candidates** – Filling the applicant pool with the highest quality candidates requires recruiting from multiple sources. For example, the recruiting effort should include recruiting candidates through internal and external job posting, physical posting of positions in places where attractive candidates are likely to gather, sourcing through social networks (e.g. Linked In) or in niche professional associations. A robust pool of candidates inevitably leads to higher quality hires.

- 4. Objective Review of Candidate Qualifications/Screening** – When candidates apply for a position, there must be objective screening to determine whether they meet the baseline criteria for the position and to deselect candidates who do not. Each department the consultants surveyed had a separate HR function, independent of the Probation Department, to conduct the first level screening of candidates for minimum qualifications. Whether or not a separate HR team does the screening, it should be conducted by someone other than the manager who will make the hiring decision or final recommendations. Moreover, all applicants must go through the same baseline screening. Hiring managers and those responsible for recommending finalists should not be informed of recommendations, political or other, until a candidate becomes a finalist and his or her references are being checked.¹⁰

¹⁰ We think that listing all recommendations and disclosing them either to the public or to the Chief Justice for Administration and Management (CJAM) or both at the time of final decision provides by itself an insufficient safeguard against the baleful influence that some recommendations, in particular those emanating from the Legislature, can have on confidence in the hiring process, at least at a time when a Legislative recommendation, particularly from one who has responsibility for budgeting or overseeing Trial Court operations, often is not viewed by the public or by the recipient as "just a recommendation." At least at this moment, such recommendations are, unfortunately, freighted with a large subtext involving the consequences of failing to follow the recommendation, even if that subtext is not one the legislator making the recommendation intends. There was a time when Legislative recommendations to Probation officials responsible for hiring did not carry that subtext, to the recipients, to the public or to anyone else, and that time undoubtedly will come again. At least until the immediate legislative reforms we propose in Section IV of this Report are effectuated, until hiring and promotion practices in the Probation Department have been stabilized, and until mechanisms are in place to ensure that both hiring and promotion are entirely merit based, all recommendations and references ought to be kept entirely out of the process until the finalists have been selected purely on merit and the time has come to check references before making the

This first line screening is designed to create a “level playing field” for all applicants. Further along in the hiring process, there will, of course, be other types of screening, including screens for drug, credit, criminal and other types of background checks as well as reference checks for the finalists.¹¹

- 5. Behaviorally Based Interviews (BBI)** – Sometimes referred to as “situational interviews,” BBIs are designed to evaluate candidates based on the premise that past performance is the best indicator of future results. Specifically, candidates are asked to describe how they have demonstrated in their current roles or recent work history the key competencies for the position they are seeking. The descriptions give hiring managers insight into how the candidate will handle specific situations and whether their likely handling of those situations is consistent with desired behavior and results.

- 6. Candidate Assessments** – Assessments are formal tests that provide an objective rating of a candidate’s aptitude and capability to perform job requirements. They are an essential component of an effective hiring and promotion process. Assessments bring “facts” rather than perceptions into the overall hiring decision, and can be customized to specific roles. Assessments of this type are created by industrial psychologists and are validated for their efficacy in screening for the applicant’s aptitude and competency to perform the tasks required for success in the position at issue. Other kinds of assessments can also be part of the selection process. By way of example, for positions where analytical and presentation skills are required, the finalists might be given a case study and required to create and deliver a presentation

final appointment.

¹¹ We recognize that some, including the Working Group, have advocated the use of an entry level examination as a means of determining whether applicants meet basic competency standards. See Working Group Report at 12-13. As discussed later in our report, creation of a sound and reliable examination is an expensive and time-consuming task and, given the different core competencies likely to be required for Probation officers in the different Trial Court Departments, it is unclear that a single examination would suffice. Nor are we convinced that the results of such an examination would identify applicants with minimum qualifications more precisely or more accurately than the review process we have recommended. Implementation of the principles we recommend will achieve better results more quickly and less expensively than those that can be achieved by an examination.

within one hour, thus displaying analytical and presentation skills in the kind of time constraints the job would require. Assessments of this type can be tailored in a way that focuses on the specific requirements of the position at issue.

7. **Applicant Tracking System** – To ensure full transparency in the recruiting process, as well as to manage recruiting efficiently, automated systems that track every step of the hiring process (from opening of a requisition to the candidate’s “hiring”) are a standard operating tool for most HR organizations. All information about the candidate and the hiring process, including resumes, assessment results, all recommendations and references however transmitted and by whomever received, the identity of the decision makers at each step of the process and any scoring by those decision makers, should be included in the system.¹²

We have set out the seven principles at a level of generality sufficient to allow tailoring that is appropriate for hiring and promotion of Probation officers in each of the Trial Court Departments. These seven principles should be essential ingredients of a redesigned and updated Probation hiring and promotion system. These principles can be aligned with appropriate elements of Administrative Order No. 4, and combined with additional principles in appropriate circumstances. In any event, these principles are commonly relied upon as national best practices for hiring and promotion, they have proven their worth in excellent probation departments elsewhere and they should be a feature of any updated hiring and promotion system used by the Acting Commissioner

¹² The Commonwealth’s Human Resources Department (HRD) uses a hiring model that in many ways parallels the practices we recommend. That model contains the following elements: (1) An accurate job description; (2) Posting of all vacancies in a visible manner; (3) Development and use of objective screening criteria; (4) Use of uniform and standard applications; (5) Structured interviews with job-related questions and standardized rating forms; (6) Reference checks; and (7) Final recommendations.

and other leaders of the Probation Department as they move forward to restore the Department to the position of excellence it once enjoyed.

III. Recommendations for Immediate Action

There are many ways to implement the principles we have just outlined. But in thinking about implementation processes, we have concluded that two overarching considerations predominate. First, the quality of the recruitment, hiring and promotion process was essentially destroyed under the administration of Commissioner O'Brien and that destruction has had a dramatically negative effect on morale within the Department and on the confidence with which the public views the Department's execution of its critically important mission. Second, immediate recruiting needs face Acting Commissioner Corbett, for, in addition to several positions at the deputy commissioner level, approximately forty Chief Probation Officer positions are either vacant or are filled by acting chief probation officers appointed during the O'Brien regime. We think that effective operation of the Probation Department requires immediate action to fill the vacant positions and to evaluate those positions occupied by acting appointees. Acting appointees who are qualified to hold those positions ought to be vetted anew, found qualified and appointed to the position, with the acting designation removed. The others ought to be replaced by those who are best qualified. In both cases, prompt action is necessary to restore morale within the Department and to restore the public confidence so profoundly affected by the corrupted process.

To take the prompt action we believe is necessary, we recommend a two-phase process described below. Before turning to that description, though, it is important for us to note our awareness of the adverse impact on Trial Court operations wrought by current economic conditions and the hiring freeze that has been in place throughout the Trial Court for some time. A few years ago, the Trial Court invested enormous time and energy in creating and implementing a nationally recognized staffing model designed to determine the number and level of employees that were necessary in each court location to deal with the business that location was handling. Today, many clerks' offices are operating at seventy-five percent of the model level and some are operating at below seventy percent. Only extraordinary commitment to public service by a large number of

employees at all levels of the Trial Court has kept the system from collapsing. In the next phase of our inquiry, we intend to focus on hiring and promotion practices throughout the Trial Court. In addition, later in this report we focus on structural recommendations that will allow better and more flexible management of the Trial Court as a whole, measures that will assist rehabilitation of the Probation Department but will also allow more equitable distribution of the burdens the poor economy has imposed on other Departments as well.

The fact remains, though, that the Ware Report described what amounted to a hijacking of an entire Department by a corrupt management team. Never in the past has an entire component of the Trial Court been tainted to the extent that the Probation Department was tainted by the cynical and corrosive manipulation of the hiring and promotion process the Ware Report revealed. In the face of that hijacking, it is not enough to make recommendations for improvement and to suggest that those recommendations be implemented whenever fiscal considerations make it optimal to do so. The essential corrective action simply cannot await optimal circumstances that may not arrive for years. That corrective action must be implemented now. Accordingly, we make the following recommendations for hiring with a deep sensitivity to other personnel pressures in the court system and only because the crisis in Probation -- both in its actual operations and its public perception -- is so severe.

With those considerations in mind, our two-phase recommendation focuses on the urgency of filling critical openings in the short-term and establishing best practices and continuous improvement for the future. Phase 1 is designed as a five month project to begin rebuilding the HR and recruiting infrastructure within the Department and to fill key leadership positions with high quality candidates recruited from within and without the Department. A number of elements of the best practice outlined above can be implemented rapidly to ensure that initial recruiting efforts are well communicated internally, create a level playing field for all candidates, introduce a new level of objectivity and discipline through assessments and ensure transparency through the reporting provided by an applicant tracking system.

Phase 2 is a fifteen month initiative, in which the Probation Department completes the HR work necessary to establish not only best practice with regard to

recruiting and promotion, but also erects the foundation for a highly competent, well trained and motivated staff that understands and supports the Probation Department’s mission, is provided with enhanced training and career development opportunities and is engaged in exceeding the performance metrics outlined by the Acting Commissioner. Among other things, Phase 2 will involve Probation Department employees in creating a mission statement for the organization, as well as completely restructuring existing job descriptions, competencies, interview structures and assessment criteria.

A. Phase 1

To implement Phase 1, we recommend that the Acting Commissioner be provided with the support necessary not only to recruit high quality talent, but also to manage an expeditious hiring process that meets high standards of integrity and does not tie up inordinate amounts of time at this critical juncture. The key ingredients of that support involve both staffing and infrastructure.

As to staffing, we recommend that the Acting Commissioner employ an experienced HR consultant and two professional recruiters.¹³ The HR consultant would work closely with the Acting Commissioner to establish and communicate interim recruiting strategy and process. The consultant would also coordinate the entire recruiting process, providing counsel to the Acting Commissioner and supervising the recruiters to ensure that productivity and quality measures are met. Additionally, the HR Consultant would provide periodic progress updates either to us or to another entity of the Supreme Judicial Court’s choosing to ensure that the hiring process is fully transparent.

As to infrastructure, we recommend that the following steps be taken as part of the Phase 1 process:

- An Applicant Tracking System be deployed not only to manage recruiting efficiency but also to track applicants, processes and outcomes. Appropriate systems are available quickly for purchase or lease. Indeed, many are essentially “plug and play.”
- The existing job descriptions be refreshed and validated as an interim measure

¹³ In the absence of currently identified resources, we are recommending contract staff because they can be assembled and terminated quickly, either because their mission has been accomplished or for any other reason the Acting Commissioner chooses.

based on the Acting Commissioner's desired profile of successful candidates.

- The candidate pool be opened to internal and external candidates and the recruiters should be instructed to place notices of available jobs in all sourcing channels that are likely to yield qualified candidates.
- The recruiters be required to screen all candidates against objective criteria designed to yield for serious consideration only those who can meet the needs of the Probation services in each of the Departments.
- An Assessment tool be developed, deployed and used to provide a "science based" evaluation of candidate suitability for each position.
- Behavioral interview questions and an interview process, including composition of interview panels and candidate evaluation criteria, be established and utilized.¹⁴
- A communications system be developed and deployed to share within the Probation Department the processes being used and the outcomes of that process to begin rebuilding internal trust and management accountability.

We think that the correct resources could be assembled and the correct metrics could be developed within one month and, with those in place, the crucial leadership positions could be filled within four months thereafter.

B. Phase 2

If selection of the HR Consultant is done well, he or she has the potential to become a trusted advisor and key contributor to the Acting Commissioner and his management team. Additionally, during Phase 1, the Consultant will develop knowledge and insight regarding how best to design and re-establish HR practices that are not only of high quality but also are customized to the needs of the Probation Department. Then, in Phase 2, the HR Consultant will provide services that are critical to implementing sustainable, long term best practice and establishing a Department that again is recognized for an engaged, high performing employee team with measurable outcomes and successful, verifiable results.

Specifically, during Phase 2, the HR Consultant would continue to provide expert

¹⁴ At one point, some Probation interview panels included members who were not affiliated with the court system. Inclusion of members from outside the Trial Court may not be appropriate in all cases but ought to be considered if and when outside membership adds real value to the process.

assistance to the Department. Recruiters would drop from two to one, depending on need. The Acting Commissioner, with the assistance of the HR Consultant, who would drive day-to-day progress, would then create and manage a plan designed to accomplish the following tasks within a period of approximately fifteen months:

- Create an enduring vision and mission for the Probation Department and translate that vision into a compelling value proposition for current and future employees.
- Establish and fully describe the job competencies required for Probation positions in each of the Trial Court departments.
- Based on mission and competencies, re-write job descriptions for roles within the Department.
- Establish a multi-channel sourcing strategy to ensure robust and diverse candidate pools for all openings.
- Work with a best practice employee assessment firm to develop custom assessment tools for Probation positions and implement those assessments.
- Create an interview process that includes appropriate panels, behavioral interview questions and scoring mechanisms.
- Establish second level screening criteria (i.e. drug, criminal, polygraph, physical exam) based on job specifications.
- Develop a communications protocol for internal and external applicants to ensure transparency in process and a positive candidate experience.
- Continue to deploy an Applicant Tracking System, not only to ensure efficiency, but also to manage reporting and metrics on the hiring process.
- Create and deploy promotional policies aligned with hiring policies.

The Phase 2 process would also include existing employees in the HR redesign work to take advantage of employee knowledge and to foster long term commitment to the Department's core purposes.

We believe that the two-phase approach just described would restore the hiring and promotion process in the Probation Department to a position of transparent excellence within a period of approximately twenty months and that the approach can be implemented at moderate cost. Moreover, Acting Commissioner Corbett has decided that he will not presently fill all of the open Deputy Commissioner positions, and the savings

flowing from that decision may substantially defray the costs of the process we have recommended. In any event, and whether or not our recommended approach is implemented, we think that approach provides a yardstick against which to measure the speed, efficacy and cost of other measures that might be recommended to reach comparable goals.¹⁵

IV. Structural Recommendations

The recommendations set out in the last two sections, critically important though they are, cannot succeed unless other changes occur as well. Corruption of the hiring process in the Probation Department could not have proceeded to the extent that it did without elimination of transparency and oversight from the hiring and promotion process. Removal of that transparency was accomplished by legislation that provided a lifetime term of office for the Commissioner, curtailed effective CJAM oversight of the Probation budget, and gave the Commissioner full and exclusive power to hire and promote. For his part, the Commissioner withdrew judicial and public participation in the hiring process and reduced or eliminated use of automated processes that would have allowed reliable and easily retrievable records showing how the hiring and promotion process in fact was operating. To prevent repetition of the gross abuses the Ware Report disclosed and to allow room both for quick implementation and for solid growth of the recommendations we have made, we further recommend that:

- The term of the Commissioner of Probation remain fixed, as it now is, at five years.
- The “exclusive authority” over appointment, dismissal, assignment and discipline of Probation officers first granted to the Commissioner of Probation in line 0339-1001 of the Probation Department’s FY 2002 budget and repeated in every budget thereafter should be removed promptly and G.L. c. 276, § 83 should be amended promptly to make the Commissioner’s appointment power “subject to approval of the chief justice for administration and management.” See G.L. c. 276, §§ 98, 99.

We agree with the Working Group that "many of the past abuses at the

¹⁵ The same basic structure can be considered as a model for making for making any necessary adjustments to hiring and promotion practices elsewhere in the Trial Court to the extent that our further inquiry shows that such adjustments are desirable.

- [Probation] Department can be attributed to legislation giving the Commissioner of Probation ‘exclusive authority’ over employee hiring, promotion, assignment, and termination decisions, with unclear oversight authority vested in the Chief Justice for Administration and Management.”¹⁶ Removal of the "exclusive authority" language and clarifying the CJAM's ultimate responsibility for oversight of hiring and promotion decisions will create a significant structural bulwark against recurrence of the kind of abuses the Ware Report described.
- The Commissioner of Probation, Acting and Permanent, institute and maintain in the Probation Department a system of effective annual performance review for all employees. The reviews should be designed not only to assess performance in the employee’s current position, but also the extent to which the employee displays competencies that are necessary for advancement to the next level. Reviews of that type not only help managers assess current performance and help employees focus on advancement, but also provide an objective and transparent component of the decision-making process when promotions are considered.
 - A prompt review of staffing in the Probation Department be undertaken using the same approach and the same tools the rest of the Trial Court used to develop reliable and scalable staffing models. The results should be promptly implemented so that hiring and promotion decisions can proceed with sound and durable targets as a guide.
 - The CJAM should be given full power to oversee expenditure of funds allocated to the Trial Court and full power to transfer those funds to Trial Court Departments and units of those departments whose needs are most pressing. As any thoughtful observer will attest, responsibility for “managing” an organizational unit without any power to affect the unit’s budget or expenditures is inevitably doomed to failure. As restoration of a sound hiring and promotion process in the Probation Department proceeds, it may be that more funds than originally anticipated are necessary. It may also be that less is required. The CJAM ought to have the power either to supply the additional funds or, in the

¹⁶ Working Group Report at 5.

event of an overestimate, put those funds to better use in some other Department of the Trial Court where needs are most pressing. In either event, the ability to control the expenditure and transfer of funds is a critically important tool for realizing efficiency and helping to coalesce organizational focus around the goals management has set.¹⁷

- The Commissioner of Probation, Acting and Permanent, be required to furnish the CJAM with records in a form the CJAM requires at intervals the CJAM directs describing the actual operation of the Probation hiring and promotion process. Furnishing records of that type will contribute to the transparency with which hiring and promotion in the Probation Department is carried out and will allow the CJAM to determine whether overall Trial Court hiring policies and practices are being followed. Indeed, the very fact that someone outside the Department will have the ability not only to approve final hiring recommendations but also look at the details of the process by which those recommendations were made inevitably reduces the opportunity for connivance and enhances confidence in the results.
- For a period of two years, this Task Force should remain in place to exercise general oversight of the Probation Department hiring and promotion process and to publish periodic reports of its observations, or the Supreme Judicial Court should appoint some other body, the membership of which consists primarily of individuals with no connection to the Trial Court, to do so. In the wake of the Ware Report, questions have been raised about the oversight of the Probation Department at various levels and an independent monitoring body can provide the kind of transparent oversight that will help to restore and maintain public confidence in Probation's newly implemented hiring and promotion processes. In so saying, we recognize the important and enormously helpful advisory role played by the Court Management Advisory Board and the value of the annual

¹⁷ We note the Working Group's agreement that the CJAM ought to have greater authority to transfer funds than current budgetary constraints permit. The Working Group, however, was divided on how much greater authority the CJAM should have. See Working Group Report at 7.

reports it produces. Like the Working Group,¹⁸ however, we believe that an independent body solely focused on Probation hiring and promotion and whose mission includes public reporting of its observations would be a better vehicle for monitoring, and providing assistance with, restoration of a sound hiring process that the Department and the public demand and deserve.

V. Civil Service

We recognize that a number of observers have recommended a civil service approach to remedying the problems the Ware Report disclosed. We strongly believe that the recommendations we have made are a better approach to resolving those problems and, whether or not our recommendations are adopted, believe with equal strength that a civil service approach is not the answer.

As noted earlier, the Probation Department functioned for years as a model of excellence without a civil service structure. We believe, therefore, the goal ought to be restoration of that excellence by deployment of updated versions of the sensitive hiring and promotion tools Probation once used, not the imposition of an anachronistic and unwieldy method for dealing with hiring and promotion, particularly a method that has failed in other contexts.

In that regard, civil service depends heavily on standardized written tests. Our own experience and the presentations made to us during the course of our meetings convince us that standardized written tests cannot detect with requisite sensitivity the varied qualities necessary for effective delivery of the varied Probation services the Department delivers on a daily basis. Moreover, creation of civil service hiring and promotional examinations is so cumbersome and so expensive that of the approximately 2,000 state and local job titles civil service currently covers, only five have civil service examinations for hiring and promotion. In the other 1,995 titles, civil service appointments and promotions are "provisional" and are made without examinations. The expense and difficulty of exam creation stems from the difficulty of tailoring the examination to the precise requirements of the positions the examination is designed to cover and the necessity of ensuring that the examinations do not accidentally disfavor any

¹⁸ See Working Group Report at 9-10.

particular societal group. Both are important goals but they can be achieved with much better effect less expensively through use of the best industry practices we recommend.

Three other observations about civil service are appropriate. The first is that high-performing organizations typically recruit approximately thirty percent of their high level employees from outside the organization, thus ensuring fresh ideas and a fresh approach to carrying out the organization's mission. That is precisely the kind of pollination the Probation Department needs now and in the future and that our recommendations are designed to encourage. Imposition of a civil service regime would be a substantial impediment to obtaining new, high-level employees from outside the Department.

Second, many of the protections said to flow from a civil service system already exist through collective bargaining agreements now in effect in the Probation Department. At a time when flexibility and rapid action are required to deal with the profound difficulties the Ware Report revealed, adding another procedural layer to personnel management would be highly counterproductive.

Finally, the civil service system is so riddled with statutory exceptions and preferences that those who score highest on examinations often do not make the final hiring or promotion list. The last thing the Probation Department needs now is a hiring and promotion scheme that conceals vast amounts of unfettered discretion beneath a patina of merit. Indeed, that is the very kind of scheme the Department is now in the process of shaking off.

VI. Conclusion

Opportunity is embedded in every crisis and the crisis produced by the corruption revealed in the Ware Report is no exception. The Trial Court has an opportunity right now to purge the taint of a corrupted hiring process from a Department that provides essential services to a broad range of Massachusetts citizens in crisis and to transform the hiring and promotion process in that Department to a national model. The Court should seize that opportunity now and should pursue it relentlessly until the transformation has been accomplished.

The measures we have recommended show the way. The recruiting practices we have outlined have been tested and proven. The implementation plan we have recommended can be installed promptly and is cost-effective. Many of the structural

recommendations we have outlined enjoy broad consensus and all are long overdue. Our recommendations insure external outreach, recruiting and competition for virtually every Probation position, beginning right now. They require tracking all phases of the hiring and promotion process. And they also require external monitoring and public disclosure of the results the reforms are achieving, thereby insuring the transparency necessary for restoration of public confidence. At least for the immediate future, we will engage in that monitoring and disclosure role while we proceed with our other work.

As we make our recommendations, we recognize the present discussion about where Probation will ultimately be located. At this critical moment, that discussion is a distraction, because regardless of where the Department eventually finds its home, we are convinced that the primary focus for the next twenty months must be on reconstitution of a first-rate hiring and promotion system, a system that updates and modernizes the system the Department employed when it was a national model not so many years ago. Anything that interferes with reconstituting such a system, be it reorganization, relocation, assimilation or something else, must give way to the revitalization the Department now requires. Necessary reform must be implemented so that the department can quickly regain its ability to provide the essential services on which so many people depend. We firmly believe that renewal and reform of a corrupted system and restoration of integrity and public confidence in the integrity of the Department demand intense and urgent focus. We stand ready to help and support that focus.

We also intend to move forward promptly with other parts of our mandate, specifically to “make recommendations designed to ensure a fair system with transparent procedures in which the qualifications of an applicant are the sole criterion in hiring and promotion” throughout the Judicial Branch. As we advocate for and await implementation of the measures we have recommended here, we plan to begin promptly with the exploration necessary to make sound recommendations regarding hiring and promotion practices in other components of the Judicial Branch.

Attachment A

Judicial Branch Hiring Task Force Members

Task Force Chair Scott Harshbarger is Senior Counsel at the law firm of Proskauer and the former Attorney General of the Commonwealth of Massachusetts.

Stephen P. Crosby is the Dean of the John W. McCormack Graduate School of Policy and Global Studies at UMass/Boston and former Secretary of Administration and Finance.

Kathleen M. Donovan is Managing Director of Manpower Business Solutions and also directs Manpower's Global RPO Center of Excellence to promote innovation and sharing of best practices in recruitment process outsourcing.

Ruth Ellen Fitch is the President of the Dimock Community Health Center and a current member of the Court Management Advisory Board.

Michael B. Keating is a partner and chair of the Litigation Department at Foley Hoag LLP, and he served as chair of the Court Management Advisory Board from 2004 to 2010.

William J. Leahy is the former Chief Counsel for the Committee for Public Counsel Services.

Hon. James F. McHugh is an Associate Justice of the Massachusetts Appeals Court since 2001 and formerly a Superior Court Justice.

Susan M. Prosnitz is the Executive Director of the Rappaport Center for Law and Public Service at Suffolk University Law School, and former General Counsel at the Executive Office of Public Safety.

Harry Spence, a lecturer at Harvard Kennedy School, was formerly the Commissioner of the Massachusetts Department of Social Services, and is a current member of the Court Management Advisory Board.

Steven H. Wright is the Executive Partner for the Boston office of Holland and Knight LLP.

Attachment B

Judicial Branch Hiring Task Force Meetings and Presenters

December 10, 2010

Initial meeting of the Task Force – member presentations

December 17, 2010

Paul Ware, Esq., Goodwin Procter

Kevin Martin, Esq., Goodwin Procter

Ronald P. Corbett, Jr., Acting Administrator, Office of the Commissioner of Probation

January 7, 2011

Paul Dietl, Chief Human Resources Officer, Executive Office for Administration and Finance, Human Resources Division

Michelle Heffernan, Deputy General Counsel, Executive Office for Administration and Finance, Human Resources Division

Hon. Robert A. Mulligan, Chief Justice for Administration and Management

January 14, 2011

David Holway, National President, National Association of Government Employees (“NAGE”)

Margaret Thompson, Probation Officer, Suffolk Superior Court, President Local RI-229, NAGE

Michael Manning, NAGE Counsel

Larry Dulley, NAGE local leader

Rita McCarthy, Chief Probation Officer, Dedham District Court, President, Massachusetts Chief Probation Officers Association

Daniel Passacantilli, Chief Probation Officer, Essex Juvenile Court, Executive Board Member, Massachusetts Chief Probation Officers Association

Bernard O’Donnell, Chief Probation Officer, Clinton District Court, Vice President, Massachusetts Chief Probation Officers Association

Edward Dalton, Retired Massachusetts Probation Department Regional Supervisor

January 21, 2011

Kate Donovan, presentation of national study

John Larivee, CEO, Community Resources for Justice

Len Engel, Managing Associate for Policy, Community Resources for Justice

January 28, 2011

Edward P. Ryan, Jr., Esq., O'Connor & Ryan, P.C.

Martin Healy, Chief Operating Officer and Chief Legal Counsel, Massachusetts Bar Association

Denise Squillante, Esq., President, Massachusetts Bar Association and Family Law Practitioner

Donald Cochran, Former Commissioner, Massachusetts Probation Department

Daniel Conley, District Attorney for Suffolk County

February 4, 2011

Hon. Barbara Rouse, Chief Justice, Superior Court Department

Hon. Paula Carey, Chief Justice, Probate and Family Court Department

Hon. Lynda Connolly, Chief Justice, District Court Department

Hon. Michael Edgerton, Chief Justice, Juvenile Court Department

Attachment C

Selected List of Documents Reviewed

- Report of the Independent Counsel (the “Ware Report”)
- Statement of the Justices of the Supreme Judicial Court Relative to the Report of the Independent Counsel, November 18, 2010
- Court Management Advisory Board Report 2009-2010
- Report of the Court Management Advisory Board, *Legislative Action Required to Achieve Managerial Excellence in the Trial Courts*
- Boston Foundation/Community Resources for Justice Report: *Priorities and Public Safety: Reentry and the Rising Costs of our Corrections System*, December 2009
- Boston Foundation/Community Resources for Justice Report: *Priorities and Public Safety II: Adopting Effective Probation Practices*, July 2010
- Probation Reform Working Group, Report and Recommendations, January 31, 2011
- Administrative Order No. 4
- Letter from CJ Mulligan modifying Administrative Order No. 4
- Trial Court Personnel Manual
- Collective Bargaining Agreement (between the CJAM and SEIU/NAGE)
- Job Descriptions for Probation Officers, Associate Probation Officers, Chief Probation Officers, First Assistant Probation Officers, and Assistant Chief Probation Officers
- Organizational chart for the Massachusetts Court System
- Organizational chart for the Massachusetts Probation Department

- Management structure flow chart for the Judicial System, from the Monan Report
- “Competitive Review of Recruiting Best Practices” (Prepared by Kate Donovan, et al)
- Various memoranda/letters submitted by “presenters”