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Playing Ball With City Hall: A Case Study of Political Patronage In New York City

New York State Commission on Government Integrity

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**"Playing Ball"* With City Hall:
A Case Study Of Political Patronage
In New York City**

*New York State Commission On Government Integrity
August 1989*

* See Page 49

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A Case Study Of Political Patronage
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August 1989

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INTRODUCTION: THE COMMISSION'S INVESTIGATION AND HEARINGS

Under the authority granted by Governor Mario M. Cuomo's Executive Order establishing the Commission on Government Integrity,¹ the Commission conducted an investigation into certain personnel procedures and practices of the City of New York and, on January 9 and 11 and April 4 and 5, 1989, held public hearings concerning that investigation. This report contains the Commission's findings from the investigation and its recommendations addressing certain shortcomings disclosed by the investigation.

The Commission's investigation and hearings, and this report, present a case study of the influence of political patronage on certain City personnel procedures and practices, primarily during 1983-86. The report focuses on the involvement of the Mayor's Office² (and, in particular, the Mayor's Talent Bank) in personnel procedures and practices during that time period and on two large mayoral agencies, the Department of Environmental Protection ("DEP") and the Department of Transportation ("DOT").³

Patronage involves the hiring and firing of public employees with political considerations playing an important, if not necessarily dispositive, role in the decision. In its classic form, it involves the hiring of individuals referred or endorsed by political leaders, in return for their political support. In a government characterized by patronage, public sector jobs are viewed as benefits controlled by those in power, who may distribute them as they choose, and may use them to reward supporters, favor friends or punish opponents.

Patronage is thus distinguished from the "merit system," which dictates a separation of politics from public personnel administration, a set of objective criteria for public sector jobs, and open competition for those jobs, with hiring, promotion and termination decisions based upon ability and performance as measured against those objective criteria. In a

¹ Paragraph I of Executive Order No. 88.1 (April 21, 1987) directs the Commission, *inter alia*, to investigate the management and affairs of any political subdivision of the State in respect to the adequacy of laws, regulations and procedures relating to maintaining ethical practices and standards in government, assuring that public servants are duly accountable for the faithful discharge of the public trust reposed in them, and preventing favoritism, conflicts of interest, undue influence and abuse of official position and to make recommendations for action to strengthen or improve such laws, regulations or procedures.

² The Office of the Mayor, a separate agency with its own budget and staff (see p. 8 below), is referred to throughout this report as the "Mayor's Office."

³ A glossary of abbreviations is annexed as Attachment A.

merit system, public employees are seen as public servants, whose duty is to deliver services to all citizens effectively and fairly, and whose allegiance is to the general welfare instead of to a political group. Thus, public jobs belong to the public and should be made available and fairly distributed to all who meet non-political criteria.

Abolishing patronage is, therefore, strongly relevant to the quest for ethical government. When political considerations affect, and are perceived to affect, hiring and other personnel decisions, government inevitably suffers. Even if the number of personnel actions that are tainted by politics is limited, a general sense of unfairness is engendered that can erode public confidence in government integrity and harm the productivity, morale and sense of professionalism of ethical, hard-working City employees. Although the Commission has not made and could not make an exhaustive study of the entire New York City personnel system, important lessons can be learned from the parts of that system the Commission has examined. (See Section V, Recommendations, below.)

Some of the City's affirmative action efforts are implicated by this investigation, particularly those relating to the Mayor's Talent Bank, but affirmative action is not the focus of this Commission. Although the Commission concludes that the Talent Bank's affirmative action efforts were undermined in the 1983-86 period by efforts to benefit job candidates with political pedigrees, this report should not be read as an evaluation of the City's affirmative action achievements in general.

In the course of the investigation, Commission staff interviewed scores of witnesses, reviewed thousands of pages of documents from City files and elsewhere, and took private sworn testimony from 49 individuals, including many of the 20 witnesses who testified publicly.⁴ Commission members and staff also consulted with experts in public administration and personnel policy.⁵

Sections I-III contain the Commission's factual findings and Sections IV and V are devoted to the Commission's conclusions and recommendations for reform. After providing an overview of the role of the Mayor's Office in City personnel practices, Section I examines the creation of the Mayor's Talent Bank and its operation in the period from 1983 to 1986, other job-referral activities of the Mayor's Office, the early 1986 destruction of certain Talent Bank records, and subsequent changes in the operation of the Talent Bank. Sections II and III explore the Mayor's Office's role in and effect on the personnel practices at DEP and DOT,

⁴ A list of witnesses who testified at the public hearings is annexed as Attachment B.

⁵ A list of the experts consulted by the Commission is annexed as Attachment C.

respectively. An Appendix, titled "DeVincenzo's Retirement," contains the Commission's factual findings concerning certain events which followed the Commission's January, 1989 public hearings and a recommendation concerning pension forfeiture, a related subject of concern to the Commission.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

This report describes certain patronage practices which existed in the period from 1983 through 1986 in the New York City personnel system. During this period, employees of the Mayor's Office played important roles in referring candidates for a wide variety of City jobs to mayoral agencies. This referral function was performed primarily by a unit of the Mayor's Office which came to be called the Mayor's Talent Bank. Although the Talent Bank was designed to broaden the pool of applicants for jobs by accepting referrals from a variety of sources including political figures, one of its major objectives was to promote the hiring of women and minorities. Throughout the 1983-86 period, Joseph DeVincenzo, a special assistant to the Mayor, exercised overall responsibility for the Talent Bank. During this same period, however, DeVincenzo and members of his staff also played a key oversight role in monitoring and approving agency personnel actions.

The consolidation of job referral and personnel oversight authority played a central role in the patronage practices described in this report. DeVincenzo's personnel oversight powers served as a lever to induce DEP and DOT to hire and extend favorable treatment to candidates referred by the Mayor's Office. And the primary concern of the Talent Bank during this period was to place candidates with political pedigrees, not to promote the hiring of women and minorities.

As a result, the affirmative action objectives of the Talent Bank were undercut. Moreover, typical consequences of patronage ensued: agency effectiveness was impaired; employee morale was seriously eroded; and employees became vulnerable to pressures to engage in improper conduct and to fudge, if not break, established procedures for hiring and promoting personnel.

The Commission's recommendations flow directly from the weaknesses of policy, management practices, and structure which this investigation has revealed. They entail a restructuring of the New York City personnel system to discourage patronage, including the transfer of day-to-day supervisory authority over personnel matters from the Mayor's Office to the Department of Personnel; an establishment of a separate Appointments Office to handle the small number of senior, policy-level positions for which political considerations are relevant; strict legal requirements for providing widespread notice of employment opportunities; development of equitable screening procedures to assure that jobs are open to all; and a drastic reduction in the percentage of provisional employees.

I

THE ROLE OF THE MAYOR'S OFFICE IN NEW YORK CITY AGENCY PERSONNEL MATTERS

A. The Mayoral Agency Work Force

The Commission's investigation explored the role of the Mayor's Office in personnel matters for mayoral agencies⁶ throughout New York City. Of necessity, that role is greatest with respect to discretionary employees, that is, employees who are not hired from civil service lists as a result of competitive examinations.⁷

Data provided by the City indicate that the number and percentage of discretionary employees in mayoral agencies have increased over the last decade.⁸ In 1978, the total number of employees in mayoral agencies was 101,193. Of that total, 90,486 (89.4%) were competitive, permanent employees, while 10,707 (10.6%) were discretionary employees. By 1986, the number of mayoral agency employees increased to 137,257, of which 102,134 (74.4%) were competitive, permanent employees, and 35,123 (25.6%) were discretionary employees. By 1988, discretionary employees comprised 30.2% (44,869 out of 148,420) of the mayoral agency work force.

In fact, between 1978 and 1988 the number of discretionary employees increased fourfold while the total mayoral agency work force increased by less than 50%.⁹

⁶ Mayoral agencies are defined as those under the direct jurisdiction of the Mayor of the City of New York.

⁷ "Discretionary employees," as reported by the New York City Department of Personnel, include employees who hold positions which are exempt from civil service; temporary employees who are hired for specified periods of time to perform specific tasks; civil service employees who are provisionally hired (in the absence of a competitively ranked list); and non-competitive civil service employees such as those in laborer positions for which a formal examination may not be appropriate. New York Civil Service Law §§ 41-43, 64, 65.

⁸ The statistics cited throughout this section are culled from the Annual Reports of the New York City Department of Personnel to the New York State Department of Civil Service and compiled at Attachment D.

⁹ See Attachment D.

B. The Authority Of The Mayor's Office
Over Agency Personnel Matters

The Mayor's Office, consisting of approximately 1,000 employees with an annual budget of approximately \$70 million,¹⁰ exercises wide-ranging authority over personnel matters in mayoral agencies. The Department of Personnel ("DOP"), a separate mayoral agency with over 500 employees and a \$30 million annual budget, also has responsibilities for agency personnel matters, some of which it exercises in conjunction with the Mayor's Office.¹¹

1. PAR And MPD Authority

Joseph DeVincenzo, a special assistant to the Mayor, exercised key aspects of the authority of the Mayor's Office over agency personnel actions throughout the period from 1983 to 1986, indeed until his resignation in February 1989. DeVincenzo and his staff exercised this authority principally through the review and approval process for Planned Action Reports ("PARs") and Managerial Position Descriptions ("MPDs").

PARs are forms submitted by mayoral agencies on a monthly basis to the Mayor's Office for the purpose (insofar as is relevant to personnel matters) of obtaining approval to hire, promote, give a raise to, change the title of, transfer or demote a City employee.¹² Thus, in essence, mayoral agencies submitted PARs in connection with all significant personnel actions relating to their employees. As James Hein, DeVincenzo's principal aide for PAR matters, testified: "Just about anything that can happen to a City employee has to come through my desk."¹³

Although PARs were also submitted to DOP and the Office of Management and Budget ("OMB"), DeVincenzo's office was the decisive force in the PAR approval process.¹⁴

¹⁰ Jan. Tr. at 455-56. References in this format are to pages of the transcript of the Commission's January 9 and 11, 1989 public hearings.

¹¹ Other entities with authority over agency personnel matters include the Office of Management and Budget ("OMB") and the Office of Municipal Labor Relations ("OMLR").

¹² DeVincenzo at 44-45, 50; Hein at 11-12. References in this format, i.e., with the name of a witness and page number, are to pages of that witness' private hearing transcript. At the request of the New York County District Attorney, the Commission is not making public any witness' private hearing transcript at this time.

¹³ Hein at 3.

¹⁴ Hein at 52-53; DeVincenzo at 51.

As DeVincenzo testified, DOP's and OMB's review of PARs was "based on a technical aspect of the process."¹⁵ Indeed, when asked what DOP's role was in the process, Hein testified that it had no real role.¹⁶ Moreover, the Mayor's Office was the final sign-off authority on PARs,¹⁷ communicating the outcome of the review process in the form of a letter commonly known throughout City personnel circles as the "Joe D. letter."

The receipt of a Joe D. letter was crucial to a range of personnel actions subject to "pre-audit" review. These actions --- which included all actions affecting managerial employees (such as hires, promotions or raises) and certain other actions affecting non-managerial employees (such as hires, promotions or transfers after which the employee would be paid a salary in excess of that prescribed by various guidelines) --- could not be effectuated by agencies until after PARs were submitted and the requisite Joe D. letter obtained.¹⁸ Most personnel actions, however, were subject to "post-audit" or after-the-fact review.¹⁹ In other words, all personnel actions that did not fall within the class of actions subject to "pre-audit" review could be implemented by agencies without first obtaining a Joe D. letter. Agencies, however, were still required to submit PARs relating to these actions to DeVincenzo's office for after-the-fact review and approval.²⁰

Each PAR, be it "pre-audit" or "post-audit", had to provide a written justification for the particular personnel action it described, and DeVincenzo's office reviewed the sufficiency of the justification.²¹ An important function of the PAR review process was to set

¹⁵ DeVincenzo at 47.

¹⁶ Hein at 53.

¹⁷ DeVincenzo at 71, 73.

¹⁸ Hein at 20, 42-46.

¹⁹ DeVincenzo at 34.

²⁰ This "pre-audit" and "post-audit" system was instituted in 1980 pursuant to Mayoral Directive 80-1, which DeVincenzo helped write. (DeVincenzo at 75.) This directive established a general policy of post-audit review of mayoral agency personnel actions provided that agencies operated within their budgetary guidelines set by OMB and acted in accordance with civil service law. Directive 80-1, however, stated that the application of the post-audit policy was a "privilege" that could be withdrawn at any time.

Directive 80-1 specified the various kinds of personnel actions subject to "pre-audit" and "post-audit" review. The kinds of actions subject to pre-audit review expanded in the years following the issuance of 80-1. (DeVincenzo at 161-62.) Most notably, the hiring of labor class employees became subject to "pre-audit" review in 1986. DeVincenzo at 110-13.

²¹ DeVincenzo at 352-53; Hein at 24, 28-31.

the salary of mayoral agency employees.²²

DeVincenzo exercised additional authority in the MPD review process. When agencies sought to create a new managerial position or upgrade an existing managerial position, they were required to submit MPDs to DeVincenzo's office and to DOP.²³ These forms describe the prospective responsibilities of the new or upgraded position and request that a particular "M" level be assigned to the position.²⁴ The City's managerial classification system consists of ten managerial, or "M" levels, with M1 the lowest and M10 the highest level. Since MPDs relate to managerial employees, they are subject to "pre-audit" review.²⁵ Accordingly, agencies cannot hire a new manager or promote an incumbent manager until the need for a new manager and the particular "M" level to be assigned is reviewed and approved.

Until 1987, DeVincenzo's office and DOP exercised joint authority over all MPDs.²⁶ When DeVincenzo's office completed its review,²⁷ it communicated its position to DOP and DOP in turn communicated the outcome of the review process (i.e., approval or rejection of the prospective managerial position or approval of the position at a lower "M" level) to the agencies.²⁸ Although DOP and DeVincenzo's office jointly determined whether to approve the creation or upgrading of a managerial position and the particular "M" level to be assigned to the new or upgraded position, it was DeVincenzo's office which reviewed and approved --- through the PAR process --- agency decisions concerning the candidate chosen and the salary to be paid.²⁹ Since these decisions were subject to pre-audit review, they could not

²² Hein at 27. Generally, agencies could pay an employee in a particular job title a salary within a specified range. If, for example, an agency sought to hire a new employee and pay a salary above the minimum amount specified for the position, DeVincenzo's staff reviewed the justification proffered by the agency and, on the basis of such factors as the prior salary history of the candidate, the salary paid to comparable employees or the salary paid to subordinates, would determine either to approve the salary at the amount requested or at a lower amount within the applicable range. Hein at 24, 28-31.

²³ DeVincenzo at 35; Skolnick at 42. (Barry Skolnick, a Mayor's Office employee, worked on MPDs during the relevant time period.)

²⁴ DeVincenzo at 26, 129; Hein at 14, 17.

²⁵ DeVincenzo at 34, 99-100; Hein at 20, 42-43.

²⁶ In 1987, First Deputy Mayor Brezenoff altered the authority of the Mayor's Office and DOP over MPDs: DOP became the lead office in MPD review and review of MPDs by DeVincenzo's office, particularly those relating to managerial positions at levels M1 through M4, was curtailed. Brezenoff at 221-23; DeVincenzo at 27-29, 36-37; Skolnick at 17-20, 27-28, 44.

²⁷ DeVincenzo's staff evaluated MPDs against criteria such as the type and nature of the supervisory duties of the position, whether the putative manager's subordinates would be clericals or professionals, the extent to which the position entailed budgetary responsibilities and the level of expertise called for by the position. Skolnick at 22-23.

²⁸ Skolnick at 23, 32.

²⁹ Skolnick at 34; Hein at 24, 28-31.

be implemented without a Joe D. letter.³⁰

2. Vacancy Notification Procedures

A mayoral directive issued on April 18, 1983 established new hiring procedures for positions at mayoral agencies, other than those governed by a current civil service list. Under these procedures, as supplemented by subsequent directives, agencies were required to submit written notice of job vacancies to the Mayor's Office. The Mayor's Office was to be accorded at least ten working days following receipt of the notice in which to submit the names of candidates for the vacant positions. The final decision concerning the selection of a candidate was to remain with the agency, but mayoral agencies were prohibited by the directive from selecting candidates without considering candidates supplied by the Mayor's Office. In the event an agency determined not to hire a Mayor's Office candidate, it was obliged to explain why.³¹

The promulgation of this April 1983 directive added to DeVincenzo's personnel authority. His office received the vacancy notices called for by the directive and referred candidates in response to the notices. Through the PAR review process, moreover, DeVincenzo's office enforced compliance with the directive's requirement that candidates referred in response to the vacancy notices be considered and adequate explanations be given if Mayor's Office candidates were not selected.

C. The Creation And Operation Of The Talent Bank: 1983-86

By promulgating the procedures requiring notice to the Mayor's Office of job vacancies, the Mayor's April 18, 1983 directive, in effect, created the Mayor's Talent Bank.³² As Mayor Koch has stated, in both his private and public appearances before the Commission,

³⁰ DeVincenzo at 99-100; Hein at 42-43.

³¹ Koch at 94; April Tr. at 561; April Exhibit 1. (References in this format are to pages of the transcript of the Commission's April 4 and 5, 1989 public hearings and exhibits introduced at those hearings.) An earlier directive, Mayoral Directive 78-11, issued in 1978 established posting requirements for job vacancies. The directive required that public notices be prominently posted by all City agencies, placed on file at DOP and published in the City Record. The purpose of this directive was to broaden the pool of applicants and thus increase competition for City jobs. Koch at 103.

³² The term "Mayor's Talent Bank," was coined later. A press release issued by the Mayor on June 28, 1983 referred rather to the "minority recruitment program announced April 18." The unit of DeVincenzo's staff that implemented the new notification procedures and referred candidates from the Mayor's Office later became known as the "Talent Bank."

a "major component" of the Talent Bank was affirmative action.³³ Increasing the number of minorities and women in the City's work force, however, was not the Talent Bank's sole objective. In his private appearance before the Commission, Mayor Koch stated that he established the Talent Bank for affirmative action purposes and

also [to] accommodate the political need when people would say, "Now listen, we are supporting the administration. We worked for you. We are not asking that you give us a job, but give us an opportunity to submit people so that you can consider them...."³⁴

Similarly, the Mayor's April 18, 1983 directive alludes to two purposes underlying the new procedures it mandated: (1) "guarantee[ing] that the City is maximizing its efforts to attract women and members of minority groups to city service" and (2) ensuring that agencies would "have the widest selection of candidates from which to choose including qualified women, members of minority groups, and individuals recommended by civic and political organizations."³⁵

The Talent Bank, accordingly, was also designed to meet a perceived political need by providing a mechanism through which individuals referred by political figures³⁶ would be considered for City jobs. As is discussed below, this objective of the Talent Bank seriously undercut its affirmative action goals.³⁷

1. DeVincenzo's View Of The Talent Bank's Purposes

In November 1985, DeVincenzo appointed Nydia Padilla-Barham ("Padilla") as the director of the Talent Bank.³⁸ In the course of familiarizing herself with the Talent Bank's operations, Padilla reviewed computer printouts relating to the candidates previously placed in

³³ Koch at 65-66; April Tr. at 560-61.

³⁴ Koch at 66.

³⁵ April Exhibit 1. The Mayor referred to both of the Talent Bank's objectives when he announced its creation. April Tr. at 605-06.

³⁶ The term "political figure" as used in this report includes both elected public officials, such as borough presidents, and leaders of political parties, such as district or county leaders.

³⁷ On July 14, 1989, Mayor Koch made public two reports containing historical descriptions of the Talent Bank which are at odds with or ignore certain of the evidence considered and factual findings made by the Commission in this report, particularly the evidence and findings concerning the preferences accorded candidates referred by political figures.

³⁸ Jan. Tr. at 61.

jobs and those currently pending.³⁹ She concluded that the number of candidates successfully referred by the Talent Bank was low and, given her understanding that the primary purpose of the Talent Bank was to promote the hiring of minorities and women, that the pending candidates included relatively few minorities.⁴⁰ At the time, the Talent Bank's recruitment efforts were negligible and no member of its staff was engaged in any recruitment activities.⁴¹ Its four full-time staff members consisted of Luz Morales, the "coordinator" who supervised the daily activities of the other staff; Denita Williams, who was responsible for entering data into and retrieving it from the Talent Bank's computer; and Magaly Maldonado and Annette Luyanda-Medina ("Luyanda"), who performed clerical duties.⁴² Accordingly, Padilla's first proposal to DeVincenzo was that the Talent Bank hire a full-time recruiter to publicize the Talent Bank, open up the Talent Bank to the general public and increase recruitment of minorities and women.⁴³

Padilla testified that DeVincenzo's response was a "sharp, no."⁴⁴ Although "street resumes" (unsolicited resumes submitted by the general public), were "okay," he explained to Padilla that "the real purpose [of the Talent Bank] is ... these political resumes that are submitted to us "⁴⁵ Her "main goal," according to DeVincenzo, was to track and follow-up on resumes referred by political figures to make sure that they were being referred for vacancies.⁴⁶ Padilla was further instructed to keep Hein informed when resumes referred by political figures were forwarded to agencies so that Hein could follow-up on them with the agencies.⁴⁷ And, as DeVincenzo told her at this or a later meeting, she should keep him

³⁹ Jan. Tr. at 66-67; Padilla Feb. at 21. References in this format are to pages of Padilla's February 24, 1988 private hearing transcript. References to "Padilla Sept. at ___" are to Padilla's September 13, 1988 private hearing transcript.

⁴⁰ Jan. Tr. at 66-67; Padilla Feb. at 17; Padilla Sept. at 16.

⁴¹ Jan. Tr. at 67-68; Padilla Sept. at 17-18.

⁴² Jan. Tr. at 62; Padilla Sept. at 13-14.

⁴³ Jan. Tr. at 67-68; Padilla Feb. at 18.

⁴⁴ Jan. Tr. at 68; Padilla Sept. at 18.

⁴⁵ Jan. Tr. at 69; Padilla Feb. at 22-23, 92-94; Padilla Sept. at 18-19.

⁴⁶ Jan. Tr. at 69-70; Padilla Feb. at 22-23.

⁴⁷ Jan. Tr. at 70; Padilla Sept. at 20.

apprised of the status of these referrals so that he could answer the questions he received from the political figures who referred the candidates.⁴⁸

2. The Talent Bank Computer, The Black Book,
Resume Cover Sheets And Colored Folders

The record-keeping practices of the Talent Bank afford additional proof that advancing the hiring of politically referred candidates was DeVincenzo's chief concern. Through its computer, the Talent Bank was able systematically to keep track of and monitor the progress of politically referred resumes. In February 1985, the Talent Bank had acquired its own office space on the first floor of 52 Chambers Street, across from City Hall.⁴⁹ As of then, if not earlier, the Talent Bank computer was able to "look up" the pending candidates and the hired candidates submitted by a particular referral source and, upon command, print a listing of that source's pending or hired candidates.⁵⁰

These "source" printouts were regularly used to apprise DeVincenzo of the status of candidates submitted by political figures. During the brief period (a matter of a few months) after Padilla became the director of the Talent Bank and before the purging of referral source information from its files and computer (see Section I.D. below), Padilla met with DeVincenzo on at least a bi-weekly basis.⁵¹ Consistent with DeVincenzo's instructions that she should track the politically referred resumes and keep him apprised of their status, Padilla reported on recent Talent Bank placements.⁵² DeVincenzo "always wanted to know the source" of placements⁵³ and Padilla provided him with printouts, including printouts containing information concerning the referral source of Talent Bank candidates.⁵⁴

⁴⁸ Padilla Sept. at 18-19. The accuracy of this account is corroborated by the fact that, among other things, the Talent Bank had been operating for more than two years without a recruiter on its staff. The Talent Bank did receive referrals from the Mayor's Minority Affairs and Hispanic Affairs Advisors and politically referred candidates were not exclusively white males. And efforts were made to obtain female candidates from a women's organization. However, the Talent Bank did not have any recruiting staff until the Spring of 1986. Padilla Feb. at 10-11, 88.

⁴⁹ Previously, the members of DeVincenzo's staff who performed Talent Bank duties were located in City Hall in Room 1 - the basement office area which included DeVincenzo's office — and in an adjoining room, Room 3-A.

⁵⁰ Jan. Tr. at 73-74; April Tr. at 134-35.

⁵¹ Jan. Tr. at 80-81; Padilla Sept. at 29-30; Padilla Feb. at 30.

⁵² Id.

⁵³ Padilla Feb. at 30.

⁵⁴ Jan. Tr. at 80, 82-83; Padilla Sept. at 29-30; Padilla Feb. at 30.

Before Padilla became the director of the Talent Bank, Hein (who was then responsible for the Talent Bank as well as his PAR duties) requested and obtained Talent Bank computer printouts. In addition to requests for printouts concerning the status of individual candidates, Hein frequently requested printouts of all pending and hired candidates referred by particular political figures.⁵⁵ Hein requested the printouts from Morales who would direct the Talent Bank's computer operator (Williams or her predecessor) to generate them.⁵⁶

The Talent Bank's computer contained referral source information well before the Talent Bank moved from City Hall to 52 Chambers Street. Vickie Moffitt, a Mayor's Office employee who had various responsibilities while working under DeVincenzo from January 1979 to February 1985, was asked by DeVincenzo in late 1983 or early 1984 to computerize the Talent Bank.⁵⁷ At DeVincenzo's direction, referral source information was entered into the Talent Bank's then relatively unsophisticated computer.⁵⁸ As Moffitt stated in private sworn testimony:

[DeVincenzo] wanted to be able to pull out [of the computer] how many candidates were placed in jobs, how many candidates didn't get jobs, what the jobs were, all of blank's candidates, all of, say, John LoCicero's candidates, which of them got jobs, which of them didn't.

* * *

The referral source was important. You know, it had to be in there, it was always part of it. That was always important...because one of the reports Joe wanted was to be able to see by referral source who got a job and who didn't, how many jobs people had gotten by referral source.... He said that's what he wanted to know.⁵⁹

Moffitt, accordingly, designed forms containing various information relating to each Talent Bank candidate and the forms had a space in which the referral source of the

⁵⁵ Jan. Tr. at 163-64, 179; Maldonado at 81-90; Luyanda at 26, 35-36.

⁵⁶ Jan. Tr. at 163-64, 179; Maldonado at 81-90; Luyanda at 26, 35-36.

⁵⁷ Moffitt at 2, 10, 23.

⁵⁸ Moffitt at 10-11.

⁵⁹ Moffitt at 11, 36-37.

candidate was entered.⁶⁰ The information in the forms was then entered into the computer.⁶¹ The computer equipment then in use could only keep track of such information as the job qualifications and referral source of candidates; it could not "match" candidates with job vacancies.⁶²

Because DeVincenzo wanted the Talent Bank's computer to match candidates with job vacancies, Moffitt obtained the assistance of the New York City Financial Information Services Agency ("FISA") in the Spring of 1984.⁶³ FISA employees worked on a program for a FISA mainframe computer that would permit matching.⁶⁴ Helen Mosley, a FISA employee who became a Mayor's Office employee in October 1984, worked on this program and subsequently developed a program for the personal computer system that the Talent Bank was using by February 1985.⁶⁵

According to Mosley, whose testimony on this subject is in accord with Moffitt's, including referral source information in the computer system "was just always part of it from the beginning, just always part of it."⁶⁶ Referral source information was needed because DeVincenzo "always wanted to know what happened when people were referred by other people."⁶⁷

Also for this reason, Mosley created the "Black Book," a large, three-ring binder --- with the words "Talent Bank" printed prominently on its spine --- containing computer-generated listings of pending and hired Talent Bank candidates in its various subdivisions. Thus, the "Black Book" provided a ready means of identifying, for example, either the pending or hired candidates referred by a particular source or the source of a pending or hired candidate.

⁶⁰ Id. at 10, 12.

⁶¹ Id. at 10.

⁶² Id. at 13-14, 19.

⁶³ Id. at 19-20.

⁶⁴ Id. at 19-21.

⁶⁵ April Tr. at 335; Moffitt at 23; Mosley at 4, 135, 140.

⁶⁶ Mosley at 16.

⁶⁷ Id. at 20.

Mosley created the "Black Book" in response to complaints from DeVincenzo's staff members about the timeliness of reports on Talent Bank candidates⁶⁸ and in order to put comprehensive information at the fingertips of DeVincenzo's staff and thus obviate the need to generate printouts in response to specific requests for information about Talent Bank candidates.⁶⁹ Mosley updated the "Black Book" at least once; for reasons that are not clear, she apparently updated it for the last time in the Summer of 1985.⁷⁰

The Commission also obtained significant documents reflecting Talent Bank record-keeping practices from Joy Schwartz, an aide to DeVincenzo who was in charge of the Talent Bank --- reporting directly to DeVincenzo --- for about a one-year period beginning in early 1984 and ending in early 1985.⁷¹ Among the documents obtained from Schwartz are some 350 "resume cover sheets." These resume cover sheets, the existence of which the Commission first learned from Padilla, Maldonado and Luyanda, are forms which record for each candidate the relevant data put into the Talent Bank computer.⁷² At the top of each form, immediately adjacent to a space for the name of the candidate, is a space (designated "Source") for his or her referral source. The source space was completed, in the handwriting of many different aides to DeVincenzo, on virtually all of the resume cover sheets obtained from Schwartz.

Other documents obtained from Schwartz corroborate the testimony of several witnesses that letters from political figures and other materials disclosing the referral source of candidates were included in the Talent Bank's files.⁷³ Schwartz' own files contained in excess of thirty letters addressed to DeVincenzo or members of his staff from political figures referring job candidates. Letters and other documents revealing the referral sources of candidates were

⁶⁸ Mosley also testified that DeVincenzo made such complaints but was unsure "whether he complained directly to me or someone told me he was complaining." April Tr. at 338-39.

⁶⁹ April Tr. at 338-39; Mosley at 103-06, 179-80, 182.

⁷⁰ April Tr. at 340; Mosley at 106, 107, 184-85. Although DeVincenzo denied any knowledge of the "Black Book," one member of his staff -- a clerical employee -- acknowledged her familiarity with it and testified that she saw it in DeVincenzo's office on one occasion. (Barlow at 29, 32, 37-39.) Mosley testified that when she first created and updated the Black Book she placed it on a shelf above the desk of DeVincenzo's secretary. April Tr. at 340; Mosley at 106, 183-85.

Padilla provided the "Black Book" to the Commission. She, in turn, received it from DeVincenzo. During the course of a meeting in December, 1985 or January, 1986, DeVincenzo mentioned a book that had been prepared for him and asked that it be brought to the meeting. He then gave that book (the "Black Book") to Padilla telling her that she could use its format or develop a different means of keeping him posted about the Talent Bank's candidates. Jan. Tr. at 83.

⁷¹ April Tr. at 106-07, 109.

⁷² Sample copies of resume cover sheets are reproduced as Attachment E.

⁷³ Jan. Tr. at 113, 151-52; Maldonado at 41-43, 75, 97-98; Luyanda at 7, 20; Padilla Feb. at 20, 47.

routed from DeVincenzo to the Talent Bank.⁷⁴ Indeed, these letters and documents were apparently the primary means by which the source of a resume could be identified for purposes of completing the "source" space on resume cover sheets.

At least for a brief period of time prior to the purging of referral source documents from the Talent Bank's files, the individual candidate folders were color-coded.⁷⁵ The resumes and other materials relating to politically referred candidates --- or the most important, or "hottest," of these sources --- were stored in red folders while the resumes of unreferred, "street" candidates were stored in green folders.⁷⁶

3. The Preferential Treatment Accorded To Politically Referred Candidates By The Talent Bank

Following the Talent Bank's move in February 1985 to 52 Chambers Street, politically referred resumes received special treatment at every phase of the Talent Bank's processes. When resumes were received at the Talent Bank,⁷⁷ application forms were mailed to the candidates. Politically referred resumes were separated from "street" resumes and application forms were mailed first to the politically referred candidates.⁷⁸ When applications were returned, the resumes and accompanying materials were sent in batches of ten to Harry Shapiro for classification.⁷⁹ Here, too, candidates whose resumes were referred by political figures often went to the head of the line. Batches of politically referred resumes were

⁷⁴ April Tr. at 136-37. When the Talent Bank obtained its own office space at 52 Chambers Street in February 1985, these letters and documents were routed (along with accompanying resumes) to the Talent Bank and then to the office of Harry Shapiro. Shapiro evaluated Talent Bank resumes to determine the particular job titles for which candidates qualified. The various papers relating to candidates were then returned to the Talent Bank for filing after the computer operator entered the relevant data about the candidates into the Talent Bank computer. (Jan. Tr. at 63-64, 150-53, 159; Maldonado at 35-37, 39-41; Luyanda at 5, 9-11, 14.) A similar procedure obtained before the Talent Bank moved to 52 Chambers Street. Maldonado at 12-16, 19-21.

⁷⁵ Jan. Tr. at 159-60; Maldonado at 44, 46-47, 78.

⁷⁶ *Id.* Due to the passage of time and the brevity of the period in which this color-coding scheme was employed, Maldonado and Luyanda are less than clear about the meaning of the other colored folders. These witnesses, however, corroborated each other with respect to the existence of the color-coded folders, and they both are corroborated on that point by Padilla. Jan. Tr. at 89-91.

⁷⁷ For the most part, unreferred or "street" resumes came to the Talent Bank through the mail. Politically referred resumes came to the Talent Bank from DeVincenzo's office and were often delivered by Hein. (Jan. Tr. at 150-51.) They were received by DeVincenzo from a variety of sources, including the Mayor's special advisor John LoCicero and directly from political figures.

⁷⁸ Jan. Tr. at 151, 154; Luyanda at 8, 11.

⁷⁹ Jan. Tr. at 159; Maldonado at 37.

regularly sent for classification ahead of street resumes.⁸⁰ As Luyanda explained, the resumes from political figures were processed first "so that in the event that DeVincenzo inquired about a special candidate or a hot referral, we would be ready to give him an answer."⁸¹

Once the initial processing of resumes was completed and all relevant information concerning candidates, including the job titles they might qualify for, was entered into the computer, a candidate could be selected by the computer upon receipt of a vacancy notice indicating an agency's intention to hire for a particular job title.⁸² By entering the complete information concerning politically referred candidates ahead of the information concerning "street" referrals, politically referred candidates were accorded another advantage.

When particularly "hot" referred candidates were received, Talent Bank staff sometimes bypassed the classification step altogether.⁸³ Morales --- who had previously assisted Shapiro in his classification duties --- would seek to classify the candidate herself; she explained, on occasion, "[t]his is a hot person, and we have to try and classify him."⁸⁴ "Street" candidates did not receive such attention.

When the Talent Bank received a vacancy notice indicating that an agency was seeking to fill one or more vacancies in a particular job title, its computer generated a printout of the candidates who, on the basis of Shapiro's evaluations, were qualified for the title.⁸⁵ On the printout, referred candidates were printed first, above an alphabetical listing of "street" referrals.⁸⁶ The Talent Bank's staff was encouraged to and, depending on the number of can-

⁸⁰ Jan. Tr. at 155-56; Maldonado at 76-77; Luyanda at 12.

⁸¹ Jan. Tr. at 156. With respect to the Talent Bank's computer, the initial step in processing involved "logging" into the computer basic information about the candidates. Here, too, politically referred resumes fared better than street resumes. (Luyanda at 34.) Shortly after her appointment as Talent Bank Director, Padilla obtained a report with respect to the backlog of resumes awaiting "logging." This report discloses that of the 50 pending batches of resumes, all 18 "Referral Batches" had been logged but only 15 of the 32 "Street Batches" had been logged into the computer. (Padilla Feb. at 88-89.) Luyanda also testified that there was a "consistent" backlog of street resumes awaiting classification. Jan. Tr. at 156.

⁸² Jan. Tr. at 63-64.

⁸³ Jan. Tr. at 156-57; Luyanda at 14.

⁸⁴ Jan. Tr. at 157.

⁸⁵ Jan. Tr. at 64-65, 160-61; Luyanda at 21-22.

⁸⁶ Jan. Tr. at 161; Luyanda at 22. Initially, the name of the referral source was entered into the Talent Bank's computer. Eventually, however, a code --- generally an abbreviation of the source's name beginning with its first letter --- was entered instead. (Jan. Tr. at 78-79; 115-16; Maldonado at 81, 84, 86; Padilla Sept. at 28.) The code for "street" referrals was "ZGEN." The apparent and perhaps intended consequence of using a code for "street" referrals that began with the last letter of the alphabet was to cause the "street" referrals to be printed out below all others.

didates who met the qualifications for the particular vacancy, did in fact give preferences to the referred candidates in selecting the candidates who were to be forwarded to the hiring agency for its consideration.⁸⁷

Specifically, Morales instructed Luyanda to obtain candidates from the top list first.⁸⁸ If Luyanda could obtain enough names from that list,⁸⁹ she "wouldn't need to bother with the second list."⁹⁰ It "was not a priority" to take into consideration gender, ethnicity or disability in selecting the candidates to be forwarded to the hiring agency.⁹¹

Padilla felt pressure from DeVincenzo and his staff to refer to agencies the politically referred resumes. Hein, for one, repeatedly told Padilla that the Talent Bank was not doing a good enough job in getting referred candidates placed.⁹² She was criticized if they were not circulated regularly, called regularly to see if they had been referred and directed to make sure that they were referred.⁹³ The pressure was to place the politically referred candidates, not minorities, women, the handicapped, or Vietnam veterans.⁹⁴

Inquiries from DeVincenzo's office concerning the status of politically referred candidates were a daily event. Several times a day Talent Bank staff were required to answer inquiries concerning matters such as which agencies a candidate had been referred to, whether the candidate had been interviewed, what the outcome of the interview was or whether there were additional openings for which the candidate might be considered.⁹⁵ Apart from evidencing

⁸⁷ Jan. Tr. at 91-93, 126, 135, 162; Luyanda at 22; Maldonado at 47, 67; Padilla Sept. at 53, 70-71.

⁸⁸ Luyanda at 22-23.

⁸⁹ When responding to a vacancy notice, the Talent Bank did not generally send more than six to eight candidates. (Jan. Tr. at 64-65.) Depending on the type of job, the Talent Bank might have less or more than six to eight candidates who might be qualified.

⁹⁰ Jan. Tr. at 162.

⁹¹ *Id.* at 185. In addition, there was no code to identify Vietnam veterans, notwithstanding the announced policy to aid them in obtaining positions. *Id.* at 391.

⁹² Padilla Sept. at 70-71.

⁹³ Jan. Tr. at 91, 93; Padilla Sept. at 53; Padilla Feb. at 122-23.

⁹⁴ Jan. Tr. at 126, 185. According to Maldonado and Luyanda, however, candidates referred by the Mayor's Minority Affairs and Hispanic Affairs Advisors were among the "hot" candidates. Maldonado at 133; Luyanda at 14.

⁹⁵ Jan. Tr. at 93-97, 100-01, 164-65; Luyanda at 35-36; Maldonado at 51-52; Padilla Sept. at 55, 58-59; Padilla Feb. at 122-23.

the importance DeVincenzo's office attached to referred candidates, these constant inquiries --- which were frequently matters of urgency requiring immediate response --- disrupted the flow of Talent Bank work.⁹⁶ As Padilla testified:

There wasn't a day that didn't go by where I didn't have to go running around looking for somebody's resume, somebody who had been referred by somebody important and I had to drop everything to interview these people and I was harassed if they didn't get referred to jobs they qualified for, even though they might not have been appropriate for the job.⁹⁷

Special efforts to obtain jobs for referred candidates were also made after candidates had been sent to agencies. For example, Luyanda was told by Morales to try to "push" referred candidates by requesting additional interviews for different vacancies for "hot" candidates who had not initially been hired.⁹⁸ Following that direction, Luyanda would sometimes seek to persuade agencies that the candidate was a very good one.⁹⁹ Padilla was told to advise an agency that DeVincenzo would be upset if a candidate had not yet been hired or interviewed.¹⁰⁰ One consequence of these efforts was, as Padilla testified, that agencies sometimes believed she was trying to "push" a politically referred candidate when she was actually emphasizing the qualifications of a candidate who was in fact a very good one.¹⁰¹

Prior to the Talent Bank's move to 52 Chambers Street in February 1985, as Schwartz's testimony establishes, politically referred candidates benefitted from similar forms of preferential treatment. Lists of candidates, sometimes ordered in a specified priority, were forwarded by Mayor's Office staff to agencies.¹⁰² With respect to those lists containing priority orderings of candidates, the high-priority candidates were referred by political figures. For

⁹⁶ Luyanda at 36; Padilla Feb. at 122-23. For example, as Luyanda testified, the Talent Bank computer could not simultaneously search for information about a candidate and perform its other functions. Accordingly, the constant requests from DeVincenzo's office for information about referred candidates created a backlog in other computer work. Jan. Tr. at 164-65.

⁹⁷ Padilla Feb. at 122-23.

⁹⁸ Jan. Tr. at 165-66.

⁹⁹ Luyanda at 32.

¹⁰⁰ Jan. Tr. at 102.

¹⁰¹ Padilla Sept. at 66.

¹⁰² April Tr. at 115-17, 125-26, 128-29. Testimony from employees of the Department of Environmental Protection and the Department of Transportation, as well as documents obtained from these agencies, confirm this practice. See Sections II and III below.

example, one list containing candidates referred by political figures and other sources, ranks the politically referred candidates ahead of the other candidates.¹⁰³ And Schwartz sometimes received from DeVincenzo letters sent by political figures containing lists of candidates that the political figures themselves had ranked in priority order. Either these letters or lists incorporating the priority ordering of the letters would then be forwarded to an agency.¹⁰⁴

Schwartz received instructions from DeVincenzo from time to time that certain politically referred candidates had to be hired, should be pushed or reconsidered.¹⁰⁵ And as Schwartz acknowledged, she would act on these instructions by telling agency personnel staff that particular candidates were important, that they should do their best to hire them, that she should be kept posted and by otherwise conveying that they should be hired.¹⁰⁶ Schwartz was not aware of any candidate who was the subject of such efforts who did not obtain a job.¹⁰⁷

Correlatively, the comparative lack of attention paid to the Talent Bank's affirmative action goals is exemplified by Schwartz's testimony that following up on priority list candidates alone occupied a "couple of hours" of her time each day.¹⁰⁸ She was not aware of any efforts made by persons under her to recruit candidates from minority, veterans or women's organizations.¹⁰⁹

103 Id. at 128.

104 Id. at 129-30.

105 Id. at 117, 125, 139-40.

106 Id. at 139-40.

107 Id. at 144.

108 Id. at 147.

109 Id. at 149-50.

4. Laborer Positions

Among the titles of interest to the Mayor's Office were manual laborers' titles. Many of the manual laborer positions in the City require few qualifications but pay well; some in excess of \$20,000 a year plus opportunities for overtime pay. Far from being open to all City residents these jobs were, at least until 1986, largely the province of politically referred candidates who were predominantly white males. DeVincenzo's office played a decisive role in the process by which these jobs were dispensed.

When agencies, chiefly DEP and DOT, advised DeVincenzo's office of their plans to hire laborers, Peter Gilvary¹¹⁰ would submit a handwritten list containing the names of potential laborer candidates to DeVincenzo. The names on these lists were overwhelmingly derived from political figures. On these lists, Gilvary wrote only the names of the candidates and their referral source. DeVincenzo, not the Talent Bank computer, then determined which of the prospective candidates would be forwarded to the agency; the testimony indicates that the Talent Bank's affirmative action goals played little if any role in this process.¹¹¹

Gilvary obtained the names of laborer candidates from a variety of sources: letters from political figures, lists from the office of John LoCicero, the Mayor's special advisor, the Talent Bank and non-political sources. The largest single source, however, was the letters from political figures that were forwarded to Gilvary by DeVincenzo. Neither these letters, nor the lists that came from LoCicero's office contained any notations concerning the ethnicity of the candidates. And Gilvary correctly believed that the names on the lists sent by LoCicero's office had in turn been obtained from county leaders and other political figures.¹¹²

The evidence also suggests that DeVincenzo determined which potential candidates would be referred to agencies on the basis of political criteria. Most significantly, apart from a candidate's name, referral source information was the only other information Gilvary recorded on the lists he submitted to DeVincenzo.¹¹³

¹¹⁰ From January 1978 until mid-1985, when he assumed different responsibilities in City Hall, Peter Gilvary was one of the members of DeVincenzo's staff responsible for reviewing PARs submitted by mayoral agencies.

¹¹¹ April Tr. at 256-61.

¹¹² *Id.* at 257-58.

¹¹³ *Id.* at 258, 261.

By 1983, if not earlier, LoCicero and his executive assistant, Jerry Skurnick, regularly contacted the office of Democratic county leaders in Staten Island, Queens, Brooklyn, and the Bronx and other political figures to invite them to submit names of candidates for laborer positions.¹¹⁴ Because the Manhattan Democratic County Leader was an opponent of the Mayor, however, he was not invited to submit candidates.¹¹⁵

Although LoCicero testified that he always asked county leaders to submit names of minority candidates, he acknowledged that Skurnick was the one who generally contacted the county leaders. Skurnick, who testified that increasing the number of women and minorities was not a major component of the Talent Bank, acknowledged that he seldom asked the representatives of the county leaders with whom he dealt to submit minority candidates.¹¹⁶ Since these county leaders did not indicate the ethnicity of their candidates when they submitted them, LoCicero and Skurnick had little means of ascertaining whether they were submitting minority candidates.¹¹⁷ And whatever efforts were made by LoCicero's office to obtain candidates from political figures who were members of minority groups, they were clearly insufficient to counter-balance the overwhelming numbers of white male candidates.

A 1978 mayoral directive sought to broaden the pool of applicants for City jobs by requiring agencies to post all job vacancies. But, as discussed in Sections II and III below, the two agencies hiring the largest number of laborers, DEP and DOT, did not comply with this directive. Rather, compliance was waived by DeVincenzo's office. The candidates referred by the Mayor's Office, accordingly, did not compete with the general public for these well-paid, minimum skill jobs.

5. "Special" Referrals

Even prior to the creation of the Talent Bank, DeVincenzo's office regularly referred job candidates to agencies. Members of DeVincenzo's staff, particularly the aides who assisted him in the exercise of his oversight authority over agency personnel actions, were charged with the task of finding jobs for these candidates.

¹¹⁴ Id. at 168.

¹¹⁵ Id. at 174. In part for this reason, residents of Manhattan were drastically underrepresented in DEP's and DOT's laborer work force.

¹¹⁶ April Tr. at 180, 207.

¹¹⁷ Id. at 181.

From the time he first assumed responsibilities for PAR review, Peter Gilvarry was given the additional responsibility of trying to find jobs for persons who were referred to him by DeVincenzo.¹¹⁸ The other members of DeVincenzo's staff doing PAR reviews, such as Hein, also endeavored to find jobs for these "special" referrals. Indeed, Gilvarry and Hein "worked" the same candidates;¹¹⁹ Hein would seek to place them at the agencies whose PARs he handled and Gilvarry at the agencies whose PARs he handled. These candidates, unlike Talent Bank candidates, were not referred to agencies in response to vacancy notices from the agencies. Rather, they were generally forwarded for a wide variety of positions, including laborer jobs, to the larger agencies; these agencies were usually under full capacity and thus were able to accept candidates in positions for which they had not previously submitted vacancy notices.¹²⁰

Gilvarry's efforts to place these candidates sometimes began when DeVincenzo or another of his aides introduced him to a candidate sitting in the hall outside DeVincenzo's office.¹²¹ Otherwise, he received their resumes from DeVincenzo. If the particular positions for which they were to be considered had not already been determined, DeVincenzo would direct that the candidates be sent to Harry Shapiro. Shapiro would then interview the candidate and determine the job titles for which he or she might be qualified.¹²²

Gilvarry generally knew the referral sources of these candidates and acknowledged that at least some of them were referred by political figures. Gilvarry learned the referral source either through a cover letter from a political figure accompanying the resume or by being told the name of the political figure by the candidate.¹²³ Gilvarry knew that others had been referred by LoCicero's office either on the basis of memos from LoCicero's office accompanying resumes or subsequent inquiries concerning candidates from LoCicero's office. With respect to these candidates, Gilvarry assumed that they had been

¹¹⁸ Id. at 255-57.

¹¹⁹ Gilvarry at 47-50, 288-89, 304-05.

¹²⁰ Id. at 269-70.

¹²¹ Id. at 264.

¹²² Id. at 263-65.

¹²³ Id. at 266-67.

referred to LoCicero's office by political figures.¹²⁴ Gilvarry retained whatever information he received or noted about the referral sources and so was able to respond to inquiries about the status of candidates from DeVincenzo which were sometimes phrased in terms of the name of the candidate's referral source rather than the name of the candidate.¹²⁵

DeVincenzo expected quick action on these "special" referrals. Indeed, partly on the basis of receiving inquiries about their status from DeVincenzo so shortly after first receiving them --- often within a day or two --- Gilvarry felt pressure to place them.¹²⁶ During the years in which he was performing PAR review, January 1978 to mid-1985, Gilvarry estimated that he received between 1 and 5 or 6 of these "special" referrals per month but none in some months.¹²⁷

According to Gilvarry, he and Hein were generally successful in obtaining jobs for these candidates.¹²⁸ Even if Gilvarry and Hein did not purposefully seek to push agencies into hiring these candidates, their importance was certainly conveyed to agencies.¹²⁹ These candidates, after all, were handled not by the Talent Bank staff but by DeVincenzo's PAR staff and their status was regularly monitored. And, moreover, posting requirements were waived for these candidates.

6. The Ethnicity And Gender Of Talent Bank Hires

A comparison of the ethnicity and gender of the Talent Bank's placements with the ethnicity and gender of discretionary City-wide hires is revealing. In fiscal year 1983-84, 48.7% of the City's discretionary hires were members of minority groups as compared to 39.5%

¹²⁴ April Tr. at 256-57.

¹²⁵ Gilvarry at 301, 309-11.

¹²⁶ *Id.* at 301. Padilla and Ellin Hauser, a Mayor's Office employee who was charged with overall responsibility for the Talent Bank for a four- or five-month period in late 1986 and early 1987, testified to feeling similarly pressured by inquiries from DeVincenzo and members of his staff about candidates who they had met or whose resumes they had received just a day or two before.

¹²⁷ Gilvarry at 263, 288. The personnel staff at DEP who regularly handled these "specials," the term by which they referred to them, estimated that DEP received an average of five per month (See n. 235 below). DOT officials estimated that they received anywhere from a "couple" to as many as ten each month. See n. 316 below.

¹²⁸ Gilvarry at 269.

¹²⁹ Testimony from DEP personnel regarding their perception of the possible consequences of not hiring City Hall candidates is discussed in Section II, below.

of the Talent Bank's placements (145 of 367); in fiscal year 1984-85, 51.6% of the City's discretionary hires were minorities compared to 50.3% of the Talent Bank's placements (238 of 473); and in fiscal year 1985-86, 54.3% of the City's discretionary hires were minorities compared to 51.2% of the Talent Bank's placements (208 of 406). Similarly, in fiscal year 1983-84, 46% of the City's discretionary hires were women compared to 26.7% of the Talent Bank's placements (98 of 367); in fiscal year 1984-85, 45.3% of the City's discretionary hires were women compared to 27.3% of the Talent Bank's placements (129 of 473); and in fiscal year 1985-86, 46.5% of the City's discretionary hires were women compared to 35.5% of the Talent Bank's placements (144 of 406).¹³⁰

Notwithstanding that a major objective of the Talent Bank was to promote the hiring of minorities and women, it did not do as well as the City as a whole in each of these years.¹³¹

D. The Purging Of Referral Source Information From The Talent Bank

The sworn testimony of Padilla, Maldonado and Luyanda, corroborated by documents and the sworn testimony of others, establishes that on a day either in late January or early February of 1986, the Talent Bank's files and computers were purged of all records revealing the referral source of Talent Bank candidates. Led by Hein, Talent Bank staff and other members of DeVincenzo's staff destroyed documents indicating the referral source of Talent Bank candidates, removed the referral source codes from the Talent Bank computer and thereby attempted to eliminate any evidence suggesting that the Talent Bank gave preferential treatment to politically referred candidates.

Before nine o'clock that morning, Hein telephoned Padilla telling her to "drop everything" and that it was a "top priority" to remove all source references from the Talent Bank.¹³² After leaving a message for Morales, the Talent Bank's coordinator, to the effect that she had to speak with her, Padilla left for a meeting.¹³³ When Padilla arrived at the Talent

¹³⁰ Charts and statistical tabulations relating to these placement statistics are collected in Attachment F.

¹³¹ As noted below, the Talent Bank's referrals for laborer positions at DEP and DOT in the years 1984 and 1985 resulted in these positions being filled overwhelmingly by white males. See Attachments G (DEP) and H (DOT) for the relevant statistical breakdowns.

¹³² Jan. Tr. at 111.

¹³³ Id.

Bank later that morning, the work had already begun.¹³⁴

When he arrived at the Talent Bank that morning, Hein appeared upset¹³⁵ and, after speaking privately with Morales, told the Talent Bank staff, including Morales, Luyanda, Maldonado, Williams and others, that they were to stop what they were doing and go through the Talent Bank files and remove all documents which made reference to referral source.¹³⁶ Luyanda recalled further instructions from Morales that they were to "destroy all incriminating evidence that would point out that there had been political referrals being made and that special preference was given to those people."¹³⁷

The staff, accordingly, spent the entire working day going through files, tearing up and throwing out all documents containing indicia of referral sources, including cover letters, resume cover sheets and, in some cases, resumes.¹³⁸

The colored file folders, used to distinguish candidates on the basis of their referral source, were also torn up and discarded,¹³⁹ but Hein directed the staff to check with him or Morales before destroying the contents of the red folders signifying the particularly "hot" referrals.¹⁴⁰

The door to the Talent Bank was kept closed and, at times, locked.¹⁴¹ Access to the Talent Bank was restricted and a special knock used to gain entry.¹⁴² Ellin Hauser, a

¹³⁴ Id. at 112-13.

¹³⁵ Maldonado at 96.

¹³⁶ Id. at 97-99.

¹³⁷ Luyanda at 41.

¹³⁸ Jan. Tr. at 113, 171-72. Some of the resumes in the files bore handwritten notations of the referral source. (Maldonado at 124.) These resumes were thrown out after the Talent Bank staff made copies, cleansed of the referral source notations. Id.

¹³⁹ Jan. Tr. at 113, 171-72, 174.

¹⁴⁰ Maldonado at 103. Because of the volume of red folders, however, they were put aside by the staff and Hein and Morales reviewed them before destroying documents in the red folders. Id. at 103-05.

¹⁴¹ Jan. Tr. at 112, 186.

¹⁴² Id. at 186.

Mayor's Office employee, entered the Talent Bank that day but was ordered out by Hein.¹⁴³ Before leaving, Hauser saw Talent Bank staff ripping up folders and heard someone in the room ask how she had gained admittance, commenting that Hauser had not used "the knock."¹⁴⁴

Referral source information was also removed from the Talent Bank computer that day. Padilla, Maldonado and Luyanda all testified that Helen Mosley, the computer specialist who had programmed the Talent Bank computer, spent at least several hours in the Talent Bank that day removing referral source data from the computer.¹⁴⁵ Hein testified that he asked Mosley to delete referral source information from the computer.¹⁴⁶

Files in at least one other office were also searched for referral source materials that day. Harry Shapiro, who evaluated and classified resumes of Talent Bank candidates, had a nearby office in 52 Chambers Street. His files, according to Maldonado who had previously been his secretary, contained resumes and other materials relating to candidates he had personally interviewed.¹⁴⁷ Maldonado recalled that someone searched Shapiro's files, removed some documents from the files and brought them into the Talent Bank where they were deposited into one of several plastic garbage bags that were used to discard Talent Bank referral source records.¹⁴⁸ Barry Skolnick, who shared Shapiro's office, also testified that Hein went into the office and examined Shapiro's resume files; he stated that he was not sure, however, whether Hein or anyone else removed any of Shapiro's files.¹⁴⁹

Hein also directed Padilla to remove from her office all materials containing

¹⁴³ Hauser at 69-70.

¹⁴⁴ *Id.* at 70.

¹⁴⁵ Jan. Tr. at 115-16, 175; Maldonado at 122.

¹⁴⁶ Jan. Tr. at 396. Although Mosley acknowledged that Hein asked her to delete referral source information from the computer and that she spent several hours working on the computer she testified that she did not remove all of the referral source data from the computer. (April Tr. at 342-46; Mosley at 175-76.) Rather, Mosley testified that she altered the referral source information, changing the names of the sources into four-letter abbreviations of their names. (April Tr. at 344.) Copies of the Talent Bank computer printouts in the Commission's possession that were generated at least several weeks before the day Talent Bank records were destroyed, however, contain these abbreviations. (Attachment I.) Furthermore, Padilla and Maldonado testified that the abbreviation codes for referral sources were used long before that day. (Padilla Sept. at 22-24; Maldonado 80-82.) Accordingly, the Commission concludes that all referral source information was removed from the Talent Bank computer as well as from its files on the day in question.

¹⁴⁷ Maldonado at 118.

¹⁴⁸ *Id.* at 118-20.

¹⁴⁹ Skolnick at 111-12, 166-67, 169-71.

referral source information.¹⁵⁰ Because she was further instructed not to throw such materials into the office trash, she took home with her the Black Book, Talent Bank computer printouts and other documents.¹⁵¹

The purging of the Talent Bank's files and computer took up the entire day and continued into the evening.¹⁵² The garbage bags containing referral source materials were taken out of the Talent Bank during the course of the day and put into Hein's car. In his public testimony, Hein stated that he took the garbage bags home to Yonkers with him because trash was not scheduled to be picked up until the next day and due to "the sensitivity and the amount of the stuff in the bags, I did not want those papers flying all over Chambers Street the next morning."¹⁵³

Regardless of what may have prompted the purging of referral source documents, it was initiated by DeVincenzo. In his public testimony, Hein stated that DeVincenzo initiated it by telling him, in substance, to "make sure that the Talent Bank doesn't have any referral sources in it."¹⁵⁴ Although Hein also testified that he did not discuss the removal of source documents with DeVincenzo during the course of the day,¹⁵⁵ Maldonado testified that she recalled Hein receiving a phone call from DeVincenzo in the morning and that Hein was called out of the Talent Bank in the afternoon to speak with DeVincenzo.¹⁵⁶ Padilla, moreover, testified that she overheard Hein giving a status report over the telephone on the progress of the efforts to remove source material and that Hein told her he had been speaking to DeVincenzo after he hung up the telephone.¹⁵⁷

Those who assisted in the destruction of referral source materials were instructed

¹⁵⁰ Jan. Tr. at 118.

¹⁵¹ *Id.* at 118-19. There is also evidence, albeit inconclusive, that documents in Room 1 in City Hall were also discarded that day. Luyanda testified that Monica Fung, a Mayor's Office employee who worked in Room 1, was present in the Talent Bank that day and, referring to the destruction of documents in the Talent Bank, said "if you think its bad here, you should see over at City Hall, it's chaos." Jan. Tr. at 174.

¹⁵² Jan. Tr. at 116; Luyanda at 44.

¹⁵³ Jan. Tr. at 425. Similarly, Maldonado recalled that Hein stated that the garbage bags should not be disposed of at 52 Chambers Street explaining that he was concerned reporters might go through the garbage. Maldonado at 115-16.

¹⁵⁴ Jan. Tr. at 435.

¹⁵⁵ *Id.* at 429

¹⁵⁶ Maldonado at 109-10.

¹⁵⁷ Jan. Tr. at 116-17.

not to speak of the events of that day. Maldonado testified that Hein said they should "leave that day, like, off the record, not to mention it at all, a day like it never happened."¹⁵⁸ Luyanda recalled that Morales advised her the next day not to mention anything about the events of the preceding day explaining that if anyone found out the Talent Bank would be shut down and the staff would lose their jobs.¹⁵⁹ Regardless of whether Hein or Morales were the individuals who instructed the participants to deny the events of that day, such instructions were given and followed by several of the participants, including when they were questioned under oath by the Commission.

The destruction of Talent Bank documents containing referral source information was not part of a regular practice designed to keep Talent Bank files up-to-date. Hein's public testimony that stale resumes (i.e., ones more than six months old) were purged from the files, as they had been in the past, along with referral source documents,¹⁶⁰ is at odds with the testimony of Padilla, Maldonado and Luyanda. Maldonado testified that the destruction of Talent Bank records that day was not related in any way to any practice of removing stale resumes from the files and that efforts to remove stale resumes did not begin until the latter part of 1986.¹⁶¹ Similarly, Luyanda testified that she did not recall any regular cleaning out of old resumes occurring prior to the destruction of referral source materials.¹⁶² And Padilla testified that although there was a "theoretical[]" policy to get rid of stale resumes, old resumes were never thrown out but rather were retained in an inactive file.¹⁶³

Other evidence before the Commission suggests that old resumes were not thrown out and that the Talent Bank's efforts to update files were desultory even after early 1986. Charles Miller, a public records officer for the New York City Department of Records and Information Services, conducted a survey of Talent Bank records over the course of several months beginning in November, 1987.¹⁶⁴ Among the records Miller surveyed were six cubic

¹⁵⁸ Maldonado at 117-18.

¹⁵⁹ Jan. Tr. at 177; Luyanda at 51-52.

¹⁶⁰ Jan. Tr. 423-24, 431-34.

¹⁶¹ Maldonado at 126-28.

¹⁶² Luyanda at 48-49.

¹⁶³ Jan. Tr. at 125; Padilla Sept. at 47-48.

¹⁶⁴ Miller at 2-4.

feet of folders relating to inactive Talent Bank candidates dating back to 1985.¹⁶⁵ In a written "Recommendation Statement," moreover, Miller recommended that closed candidate folders be "weeded out twice annually." In his conversations with Talent Bank staff, Miller was never told that the Talent Bank was already weeding out inactive folders on a regular basis.¹⁶⁶

Salvatore Salamone, the Director of Management Information Systems at the Department of General Services, began an audit of the Talent Bank in the late spring or early summer of 1987 at DeVincenzo's request.¹⁶⁷ On the basis of some twelve to fifteen meetings with Hein, Padilla and others he prepared a "Top/Down Analysis" of the Talent Bank.¹⁶⁸ In his analysis, Salamone identified a number of items that Hein, Padilla and the others all agreed were problems at the Talent Bank.¹⁶⁹ One such problem was "We don't purge files systematically."¹⁷⁰ Salamone was never told during the course of his meetings with Talent Bank staff that the Talent Bank had any policy with respect to purging files.¹⁷¹

E. The Talent Bank's Improved Affirmative Action Performance

In part as a result of changes in the procedures by which the Talent Bank obtained and referred candidates for laborer positions and changes in the procedures by which agencies hired laborers, the Talent Bank's affirmative action performance began to improve in 1986. In fiscal years 1983-84, 1984-85 and 1985-86, as previously noted, the Talent Bank's placements reflect a lower percentage of women and minorities hired than the percentage of women and minorities hired in these years by the City as a whole.¹⁷² But in fiscal year 1986-87, for the first time, the Talent Bank's minority placement performance exceeded that of the City. In this year, 68.3% of the Talent Bank's placements were members of minority groups as compared with the 58.5% of the City's discretionary hires who were members of minority

¹⁶⁵ Id. at 7-9.

¹⁶⁶ Miller at 12-13.

¹⁶⁷ Salamone at 3-4, 6.

¹⁶⁸ Id. at 11-14, 20.

¹⁶⁹ Id. at 12-13, 31.

¹⁷⁰ Id. at 37.

¹⁷¹ Id. at 38.

¹⁷² See the comparison set forth at pages 26-27 above.

groups.¹⁷³

Changes in Talent Bank procedures relating to laborer hiring were prompted when First Deputy Mayor Brezenoff learned in late 1984 or early 1985, but in any event not later than February 1985, that a disproportionate number of white males had been getting laborer jobs paying in excess of \$20,000.¹⁷⁴ DeVincenzo informed Brezenoff that the over-representation of white males was "attributable in part because of the nature of the referrals which were coming very heavily from elected and political officials and unions and Vietnam veterans"¹⁷⁵ More specifically, Brezenoff learned that the majority of laborer referrals were coming from county leaders.¹⁷⁶

Brezenoff, accordingly, instructed DeVincenzo to take a number of steps to improve the placement of minorities and women. He directed DeVincenzo to increase his efforts at expanding the Talent Bank's referral sources by using TAP centers, women's organizations and the Mayor's Advisors for Black and Hispanic Affairs.¹⁷⁷ He also told DeVincenzo to tell the Talent Bank's existing referral sources, including county leaders, that they would have a better chance of obtaining jobs for their nominees if they were minorities or women.¹⁷⁸

By the summer of 1986, however, Brezenoff had concluded that insufficient progress had resulted from these steps and determined, with the concurrence of the Mayor, to take "fundamental action."¹⁷⁹ The Talent Bank thus became, around August of 1986, the exclusive source for laborer candidates and agencies were required to hire only from lists of candidates provided by the Talent Bank.¹⁸⁰

¹⁷³ The Talent Bank's placement of women, however, continued to lag behind the City in fiscal year 1986-87. See Attachment F.

¹⁷⁴ April Tr. at 476-77; Brezenoff at 61-62, 79-83, 119-20.

¹⁷⁵ April Tr. at 477.

¹⁷⁶ April Tr. at 478-79.

¹⁷⁷ April Tr. at 475-80; Brezenoff at 59-60, 120-21.

¹⁷⁸ April Tr. at 480; Brezenoff at 120-21.

¹⁷⁹ April Tr. at 475.

¹⁸⁰ April Tr. at 474; Brezenoff at 53-57.

Mayor Koch did not learn from Brezenoff until sometime in 1986 "that a disproportionate number of the laborers hired through the Talent Bank were white males,"¹⁸¹ that "laborer jobs, in large numbers, not exclusively, were filled by having calls made to political leaders to tell them there were jobs available"¹⁸² or that LoCicero had been making such calls.¹⁸³ In early 1987, Mayor Koch directed another change: the implementation of a lottery system for the selection of the Talent Bank laborer candidates who would be forwarded to agencies when agencies planned to hire laborers.¹⁸⁴

Apart from these changes relating to laborer positions, the Talent Bank changed in other ways in 1986. Following the destruction of records in early 1986, referral source information was no longer stored in the Talent Bank computer or in the individual candidate files.¹⁸⁵ And Padilla observed a greater concern on DeVincenzo's part about the placement of women and members of minority groups through the Talent Bank.¹⁸⁶

F. The Role Of Joseph DeVincenzo

Joseph DeVincenzo's dominant role in the patronage operations described above is established by the overwhelming weight of the evidence. His role is important to understand because he reported directly to Deputy Mayor Brezenoff, maintained close communication with the Mayor's Special Advisor John LoCicero, and exercised authority legally vested in the Mayor and delegated to him as a subordinate of the Mayor.

The copies of the Talent Bank computer printouts furnished to the Commission by Schwartz and Padilla establish that the Talent Bank systematically recorded the referral

¹⁸¹ April Tr. at 557.

¹⁸² Koch at 74.

¹⁸³ April Tr. at 565-66.

¹⁸⁴ April Tr. at 487-88, 566.

¹⁸⁵ Talent Bank staff, however, were expected to keep track informally of referral sources. (Jan. Tr. at 122; Padilla Feb. at 53-54; Luyanda at 52.) Padilla was obliged to continue to report to DeVincenzo on the status and progress of particular candidates. (Jan. Tr. at 121-22.) While pressure from DeVincenzo's office to place "specials" subsided following the purging of source documents, Padilla testified that by 1987 it had returned. (Jan. Tr. at 140-41; Padilla Feb. at 54-55.) Ellin Hauser also testified that during the period in which she was in charge of the Talent Bank (late 1987 and early 1988), a great deal of her day was spent interviewing "specials" sent to her by DeVincenzo and members of his staff. (Hauser at 189-90.) In about May, 1987, DeVincenzo suggested to Padilla and others that referral source information be put back into the computer. Jan. Tr. at 141.

¹⁸⁶ Padilla Feb. at 107; Padilla Sept. at 90-91.

source of its candidates. The testimony of Padilla, Moffit, Mosley and others establish the existence of source information in the Talent Bank's computer and demonstrate DeVincenzo's knowledge of its existence. His top aides would not have undertaken on their own initiative to develop and operate Talent Bank computer systems containing such significant information as the political referral source of candidates.

The resume cover sheets that Schwartz provided to the Commission establish that source information was integral to the Talent Bank's operation. They too spell out DeVincenzo's role in its operation. Several of them contain instructions and notations from DeVincenzo in his own handwriting.¹⁸⁷ It is improbable that in reviewing these forms and writing these messages on them DeVincenzo could have failed to notice their "Source" space, particularly given its prominence on the forms.

DeVincenzo's testimony that he accorded no preferences to candidates on the basis of political considerations is contradicted by other documents obtained from Schwartz. Various of these documents reflect determinations about the relative priorities to be accorded candidates referred by political figures and instructions that such candidates "must be hired," "pushed" or otherwise placed. Schwartz testified that DeVincenzo, not she, made these determinations and delivered these instructions and it is unlikely that a low-level City Hall employee could have been in a position to assess such political priorities and issue such directions.

DeVincenzo's testimony that he either threw out or forwarded to LoCicero's office any letters he received from political figures referring job candidates is also contradicted by the documents in Schwartz's files. Her files contained more than thirty letters addressed to DeVincenzo or members of his staff from political figures referring job candidates. Schwartz testified that letters from political figures referring candidates and other documents disclosing the referral source of candidates were routinely forwarded to her by DeVincenzo.¹⁸⁸

Finally, the evidence established that DeVincenzo played a supervisory role in the early 1986 destruction of records. Hein did not act on his own initiative in directing this urgent and secret operation. In fact, Hein testified that DeVincenzo initiated the operation by instructing him to make sure that the Talent Bank's records contained no referral sources.¹⁸⁹ And Padilla testified that she overheard Hein's end of a telephone conversation that day

¹⁸⁷ April Tr. at 113-15. See, e.g., Attachment E.

¹⁸⁸ April Tr. at 136-37.

¹⁸⁹ Jan. Tr. at 429, 435.

between Hein and DeVincenzo in which Hein reported on the status of the operation.¹⁹⁰

¹⁹⁰ Jan. Tr. at 116-17.

II

THE MAYOR'S OFFICE AND THE PERSONNEL PRACTICES OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

During the period 1983-86, candidates referred by the Mayor's Office to the Department of Environmental Protection ("DEP") enjoyed numerous advantages over other candidates for jobs. Although precise figures cannot be determined, at least a substantial portion of Mayor's Office candidates were persons who had been referred by political figures. At times, various forms of pressure were brought to bear on DEP to hire these candidates and the oversight authority that DeVincenzo's office exercised over DEP's personnel actions played a key role in the placement of candidates referred by the Mayor's Office.

A. The Mayor's Office's Authority Over DEP Laborer Hiring

As DEP records establish, it hired some 197 laborers in 1984 and 1985.¹⁹¹ These positions paid well in excess of \$20,000 and offered opportunities for overtime.¹⁹² In theory, these jobs were open to all New York City residents who could pass a medical examination and possessed a valid driver's license.¹⁹³ However, although a mayoral directive required that all job vacancies be posted, DEP did not post laborer vacancies.¹⁹⁴ Nor did it advertise their existence.¹⁹⁵ Rather, DEP notified only DeVincenzo's office when it planned to hire laborers.¹⁹⁶ Sherri Roth and Marlene Hochstadt, currently Deputy Directors of Personnel at DEP, estimated that the overwhelming majority --- perhaps more than 90% --- of all laborer hires in the 1983-85 period were Mayor's Office referrals.¹⁹⁷ And all laborers hired were

¹⁹¹ See also Jan. Tr. at 194; Roth at 62-63.

¹⁹² Jan. Tr. at 194; Hochstadt at 13-14.

¹⁹³ Jan. Tr. at 195; Roth at 71; Hochstadt at 13.

¹⁹⁴ Jan. Tr. at 208; Roth at 14, 15, 30; Hochstadt at 21-22, 96.

¹⁹⁵ Jan. Tr. at 208; Roth at 30; Hochstadt at 22.

¹⁹⁶ Jan. Tr. at 195; Roth at 14; Hochstadt at 18.

¹⁹⁷ Jan. Tr. at 204; Roth at 42, 53, 63; Hochstadt at 28-30, 60.

subject to prior approval by DeVincenzo's office.¹⁹⁸ Accordingly, as a practical matter, referral by the Mayor's Office was an additional requirement for a laborer job at DEP.

After DEP notified DeVincenzo's office of its intention to hire laborers, DEP's personnel staff received lists of candidates from DeVincenzo's office.¹⁹⁹ Sometimes one list was sent; sometimes a number of smaller lists were sent.²⁰⁰ At times, these lists bore notations indicating the names of the political figures who had referred the candidates.²⁰¹ Less frequently, DeVincenzo's office also transmitted the names of candidates by simply forwarding to DEP letters from political figures and union representatives addressed to DeVincenzo or other Mayor's Office staff that contained listings of laborer candidates.²⁰² Even when documents from the Mayor's Office did not indicate the names of the political figures who had referred candidates to the Mayor's Office, Roth and Hochstadt --- the DEP employees who regularly received and handled these lists --- sometimes learned the source of individual candidates from Fred Carfora, the then Deputy Commissioner for Administration at DEP.²⁰³ Roth and Hochstadt would then record the source on the list or elsewhere.²⁰⁴

According to Roth and Hochstadt, they did not always know who had first referred particular candidates to the Mayor's Office, nor did they think it important to know: what was important was that these candidates were the Mayor's Office's candidates.²⁰⁵ Roth, Hochstadt and others at DEP, however, believed that the Mayor's Office's candidates were predominantly those first referred by political figures.²⁰⁶

¹⁹⁸ Jean at 91.

¹⁹⁹ Jan. Tr. at 196-97; Roth at 11-14, 20-21, 24-26; Hochstadt at 36-37.

²⁰⁰ Jan. Tr. at 197; Roth at 16, 24.

²⁰¹ Jan. Tr. at 199-200, 250-51; Roth at 20-21, 83-84; Hochstadt at 50.

²⁰² Jan. Tr. at 198-99, 248-50; Roth at 24.

²⁰³ Jan. Tr. at 200; Roth at 20-21; Hochstadt at 56. When Carfora apprised them of the source of particular candidates, the source was a political figure. Roth at 21-23.

²⁰⁴ Roth at 21-22.

²⁰⁵ Jan. Tr. at 346-47; Roth at 20-21; Hochstadt at 50-53.

²⁰⁶ Jan. Tr. at 254-55, 306-07; Hochstadt at 50-53, 204-05.

Candidates were individually interviewed for laborer positions at periodically conducted "pools," or mass interview sessions.²⁰⁷ Although the vast majority of candidates were Mayor's Office referrals, some arrived at the pools by other routes, including candidates referred directly to DEP by political figures; candidates referred by Vincent Parisi, a representative of District Council 37; and DEP "internals," candidates referred by DEP employees or who were themselves DEP employees seeking to obtain higher-paying laborer jobs.²⁰⁸ People who were not referred by one of these routes, but who merely sent letters to DEP asking to be considered for laborer jobs, were not interviewed.²⁰⁹

At the hiring pools, all candidates were interviewed by DEP personnel staff and representatives of the particular DEP bureaus seeking to fill vacancies.²¹⁰ The candidates were rated on a scale of 1 to 10, with 10 the highest. A score of 5 was the usual cutoff point; candidates rated below 5 were not hired and candidates who were rated 5 and above generally were hired.²¹¹

Candidates who were not referred by the Mayor's Office, but who were interviewed and rated anyway, had no real chance of obtaining jobs because the hiring of such a candidate was rarely approved.²¹² Rather, as demonstrated by DEP documents and the testimony of Roth and Carfora, DEP's regular practice was to hire only the Mayor's Office candidates. If the number of acceptable Mayor's Office candidates was insufficient to fill all the existing laborer vacancies, the excess vacancies remained unfilled until the Mayor's Office supplied additional candidates who were interviewed individually or at subsequent pools.²¹³

A June 1985 memorandum from Hochstadt to Carfora concerning a laborer pool conducted on June 5, 1985 illustrates this practice. DEP interviewed candidates for 35 vacancies. Of the 31 Mayor's Office candidates interviewed, 18 were selected. DEP "felt

²⁰⁷ Jan. Tr. at 197.

²⁰⁸ Jan. Tr. at 198, 201, 211, 303; Hochstadt at 23, 32, 59, 61-62; Roth at 28, 32-33, 42, 53-54, 58.

²⁰⁹ Jan. Tr. at 202; Roth at 29, 31.

²¹⁰ Jan. Tr. at 208; Roth at 37-38; Hochstadt at 64.

²¹¹ Jan. Tr. at 209; Roth at 38-39; Hochstadt at 65-66.

²¹² Jan. Tr. at 206, 333-34; Hochstadt at 60-63; Roth at 53, 63. Indeed, Hochstadt testified that she could not recall any instances in which the requisite approval to hire a non-Mayor's Office candidate was obtained from DeVincenzo's office. Hochstadt at 62-63.

²¹³ Jan. Tr. at 204-06, 314-15; Roth at 55-56, 86.

obligated" to interview 14 candidates referred directly to it by elected officials and 12 of them were found acceptable. However, these 12 candidates were not hired even though they were qualified. Instead, Mayor's Office candidates with relatively low ratings were hired over other candidates with higher ratings.²¹⁴

After pools were conducted, DEP apprised members of DeVincenzo's staff which Mayor's Office candidates had been accepted and which rejected.²¹⁵ Various efforts to "push" one or more of the rejected candidates followed every pool.²¹⁶ Members of DeVincenzo's staff sought explanations of the reasons why particular candidates had not been selected, explaining at times that DeVincenzo wanted to know or that DeVincenzo was very interested in the particular candidate.²¹⁷ Hochstadt, Roth and others provided the explanations, either immediately on the basis of their records or after checking with the representatives of the DEP bureaus who had interviewed the candidates.²¹⁸ These explanations were rarely sufficient.²¹⁹

Sometimes within twenty minutes of providing an explanation, members of DeVincenzo's office (including Schwartz, Gilvarry and Hein) would either call back and say that the reasons were not good enough or that they were under pressure from DeVincenzo, or otherwise communicate a request that the rejected candidate be reconsidered.²²⁰

Hochstadt and Roth, accordingly, were obliged to contact the relevant DEP bureau. They would explain that the Mayor's Office was pushing a particular candidate and either ask for more information or request that the candidate be accepted.²²¹ Depending upon the bureau's response, second and third telephone calls between DeVincenzo's office and DEP's personnel staff might follow.²²² These efforts sometimes but not always resulted in the hiring

²¹⁴ Jan. Tr. at 217-18; Hochstadt at 84; Roth at 85-86.

²¹⁵ Jan. Tr. at 212-13; Roth at 36; Hochstadt at 71.

²¹⁶ Jan. Tr. at 212-14; Roth at 36, 43-44; Hochstadt at 72-74.

²¹⁷ Jan. Tr. at 212-15; Roth at 36, 44-45; Hochstadt at 71, 75.

²¹⁸ Jan. Tr. at 213; Roth at 36; Hochstadt at 75-76.

²¹⁹ Jan. Tr. at 213; Roth at 49-51.

²²⁰ Jan. Tr. at 213-15; Roth at 49-51; Hochstadt at 76-77.

²²¹ Jan. Tr. at 216; Roth at 46-49, 52; Hochstadt at 78, 82-83.

²²² Roth at 36-37, 39-40.

of a previously rejected candidate.²²³ Occasionally, moreover, Hochstadt and Roth would learn from Carfora that a Mayor's Office candidate who had not been acceptable to the bureau was acceptable or was to be scheduled for a medical examination, a prerequisite for employment.²²⁴ Accordingly, they believed that persons above them at DEP had been contacted by DeVincenzo or his staff in continuing efforts to get jobs for candidates who were apparently of particular importance to the Mayor's Office.²²⁵

The rating process was also influenced by the Mayor's Office. Because it was difficult to defend a decision not to select a marginally rated Mayor's Office candidate, DEP regularly adjusted the ratings of those Mayor's Office candidates who received a marginal rating. Thus, a candidate who had been rated a "5" might have his rating adjusted down to a "4" and be rejected or up to a "6" and be accepted. In this manner, DEP sought both to preempt efforts from DeVincenzo's office to push rejected Mayor's Office candidates and to enhance its ability to respond to such efforts.²²⁶

Although DEP did not post or advertise laborer vacancies, some members of the general public became aware of vacancies nonetheless. In addition to those who wrote letters to DEP,²²⁷ interested persons came to DEP's offices several times a month.²²⁸ Cassandra Kennedy, an employee of DEP's Recruitment Unit, received inquiries from persons who walked in off the street.²²⁹ Knowing that it was pointless for her to do so, Kennedy explained that she could not accept their names or resumes.²³⁰ Although she was uncertain about whether she should tell them the truth, Kennedy advised them to try to obtain a letter of reference from a

²²³ Jan. Tr. at 216-17; Roth at 38-40, 50; Hochstadt at 78-79, 83-84.

²²⁴ Jan. Tr. at 216-17; Roth at 45, 49-50; Hochstadt at 78-79.

²²⁵ *Id.* Members of DeVincenzo's staff also telephoned DEP to provide names of candidates both before and after hiring pools were conducted. (Jan. Tr. at 197, 221; Roth at 18, 27.) Candidates whose names were thus obtained after pools were sometimes interviewed by Hochstadt or Roth. (Jan. Tr. at 221; Roth at 57-58.) Like the candidates interviewed at the hiring pools, some of these candidates were "pushed" by DeVincenzo's office. Jan. Tr. at 221; Roth at 57-58.

²²⁶ Jan. Tr. at 210-11; Roth at 40-43.

²²⁷ Persons who wrote letters to DEP inquiring about laborer vacancies received a letter stating that their names would be kept on file. They did not obtain interviews. Jan. Tr. at 202; Roth at 28-30.

²²⁸ Kennedy at 16, 19.

²²⁹ *Id.*

²³⁰ *Id.* at 17-18.

political source and hand-deliver the letter to Room 1 in City Hall.²³¹ The general response to her advice was a comment to the effect that "oh, so this is a political thing."²³²

DEP employees noted that the Mayor's Office's laborer candidates reflected a low percentage of women and minorities, and a high number of Staten Island residents.²³³ DEP personnel records concerning its 197 laborer hires in 1984 and 1985 demonstrate the accuracy of these perceptions. In 1984, approximately 69% of DEP's laborer hires were white males, 29% were minority males and females, 31% were Staten Island residents and 5% were Manhattan residents. Similarly, in 1985 approximately 65% of DEP's laborer hires were white males, 34% were minority males and females, 22% were Staten Island residents and 6% were Manhattan residents.²³⁴

B. "City Hall Specials"

As often as five times a month, DEP received "special" referrals from DeVincenzo's office.²³⁵ Unlike Talent Bank or laborer candidates, these referrals were not sent in response to specific vacancy notices posted by DEP.²³⁶ Rather, they were candidates for whom DEP sought to find vacancies.²³⁷ DEP was generally understaffed and thus able to hire these "City Hall specials" (as they were referred to by DEP personnel staff) to fill vacancies that had not previously been posted, either because there were no immediate plans to fill the vacancies or because they had not gotten around to posting the vacancy notices.²³⁸ Since DEP was not required to post the vacancies for which "City Hall specials" were considered, the "specials" did not have to compete for these vacancies with other candidates.²³⁹

²³¹ Id. at 17-18, 33.

²³² Id. at 19.

²³³ Jan. Tr. at 218, 289; Roth at 74-75; Kennedy at 27-28.

²³⁴ For a more detailed analysis, see Attachment G.

²³⁵ Jan. Tr. at 223; Roth at 106.

²³⁶ Jan. Tr. at 222; Roth at 96; Hochstadt at 107.

²³⁷ Jan. Tr. at 224; Roth at 123-24.

²³⁸ Jan. Tr. at 227; Roth at 119-20; Hochstadt at 107-08.

²³⁹ Jan. Tr. at 228-29; Roth at 116, 119-21; Hochstadt at 108-09.

Some "City Hall specials" --- those who were referred to DEP but not for a specific position --- enjoyed an additional advantage. DEP's personnel staff would interview these candidates or evaluate their resumes, or both, to determine the job titles for which they would be qualified.²⁴⁰ In this evaluation process, the salary that the "special" was looking for was sometimes crucial.²⁴¹ DEP's staff would endeavor to find a job title for which they were qualified and which paid a salary commensurate with the amount sought by the "City Hall special."²⁴²

In contrast, no such attention was devoted to the members of the general public who, without specifying a particular position, mailed their resumes to DEP seeking employment. DEP received up to 500 resumes a week in the mail and roughly half of these resumes were not sent in response to vacancies posted or advertised by DEP.²⁴³ Rather, they were sent by people who expressed a general interest in obtaining employment at DEP.²⁴⁴ Because of the volume of these resumes, DEP's small personnel staff could do little more than place them in an inactive file after mailing letters advising that their resumes would be kept on file.²⁴⁵

Some "City Hall specials" were pushed by DeVincenzo's office more than others.²⁴⁶ Roth and Hochstadt were told by Hein, Gilvarry, Schwartz and others that particular candidates were "hot," "high priority" or "important."²⁴⁷ These candidates were the subjects of frequent follow-up calls.²⁴⁸ Members of DeVincenzo's staff would seek to learn the status of "City Hall specials" (e.g., whether they had been interviewed yet, when they would be interviewed, what the results of interviews were) and sometimes explained that DeVincenzo

²⁴⁰ Jan. Tr. at 222-23; Roth at 98, 126-27, 131-33; Hochstadt at 103, 113-14, 119; Sullivan at 17.

²⁴¹ Roth at 105-06; Sullivan at 12-14.

²⁴² Jan. Tr. at 222-24; Hochstadt at 113-16; Sullivan at 12-15, 17.

²⁴³ Jan. Tr. at 202, 233; Roth at 131-32.

²⁴⁴ Id.

²⁴⁵ Jan. Tr. at 202, 233; Roth at 131-32; Hochstadt at 117-19.

²⁴⁶ Jan. Tr. at 223; Roth at 96, 99-101; Hochstadt at 99.

²⁴⁷ Hochstadt at 120-21; Roth at 148-50.

²⁴⁸ Hochstadt at 101-02, 216-18; Roth at 107-08.

wanted to know or that they were being pressured by DeVincenzo.²⁴⁹ Gilvarry, in particular, would sometimes sound distraught when inquiring about the status of a referral.²⁵⁰ The importance of certain "City Hall specials" was also communicated by the frequency of telephone requests for updates on their status.²⁵¹ For example, the same candidate might be the subject of more than one status request on the same day or status requests on successive days.²⁵²

In addition to Hochstadt and Roth, Carfora also received resumes or other information relating to "City Hall specials" from DeVincenzo's office.²⁵³ At times in a distraught tone, Carfora would tell DEP personnel staff that he was getting a "lot of heat," or pressure about a particular candidate, that the candidate should be shopped around to the various bureaus or that a job should be found for the candidate.²⁵⁴ At times, DEP's personnel staff would be obliged to drop their other work and attend to the process of finding jobs for these candidates.²⁵⁵

If a "special" was interviewed by a DEP bureau but the bureau did not want to hire the candidate, additional interviews at other bureaus or at the same bureau for the same or different positions would be arranged.²⁵⁶ Less frequently, members of DeVincenzo's staff would question or reject the reason why a bureau did not want to hire a candidate.²⁵⁷ And at least on some occasions, the bureau would then agree to hire the candidate.²⁵⁸

²⁴⁹ Jan. Tr. at 224; Hochstadt at 99-100, 102-03, 111-12, 120-21.

²⁵⁰ Jan. Tr. at 224-25; Roth at 101.

²⁵¹ Hochstadt at 101, 216-17.

²⁵² Hochstadt at 101-02, 217-18.

²⁵³ Hochstadt at 100, 113; Martin at 34-35; (Roger Martin was the DEP Personnel Director from 1983 to 1985.) Roth at 96, 110-11.

²⁵⁴ Jan. Tr. at 224-25, 280-81; Hochstadt at 113; Martin at 34-35; Roth at 101, 103.

²⁵⁵ Sullivan at 27.

²⁵⁶ Jan. Tr. at 231, 233; Hochstadt at 104-05, 107; Roth at 111.

²⁵⁷ Hochstadt at 103-04; Roth at 109-10.

²⁵⁸ Hochstadt at 104-05; Roth at 112-13.

If not as a result of the first interview, then as a result of second or third interviews, "City Hall specials" were hired by DEP.²⁵⁹ Indeed, except for occasional instances in which a "special" was hired by another agency, Roth could not recall a single instance in which a position was not found for the heavily pushed "specials" at DEP.²⁶⁰

C. Talent Bank Candidates

Talent Bank candidates were also pushed by the Mayor's Office.²⁶¹ Cassandra Kennedy, who acted as DEP's liaison with the Talent Bank, regularly received telephone calls from Talent Bank staff seeking additional interviews for their candidates and she was often told that particular candidates were "hot" or "special."²⁶² Like "City Hall specials," the status of some Talent Bank candidates was frequently monitored, and Talent Bank staff sometimes explained that DeVincenzo wanted the information or that they were under pressure to obtain it.²⁶³

That DEP felt pressure from DeVincenzo's office with respect to Talent Bank candidates is also clear from DEP's handling of "candidate disposition sheets." When the interviewing process was completed, the bureau at DEP that was hiring for the particular vacancy filled out these forms, recording on them all the candidates interviewed, the results of the interviews and the reasons why rejected candidates were rejected and the other candidates selected.²⁶⁴ DEP's personnel staff then forwarded the candidate disposition sheets to DeVincenzo's office along with the Planned Action Report for the particular hire.²⁶⁵ If the candidate disposition sheet did not indicate that all Talent Bank candidates had been interviewed (or failed to state a sufficient explanation for not interviewing a particular

²⁵⁹ Jan. Tr. at 226-27; Hochstadt at 105-07; Roth at 103, 111-12.

²⁶⁰ Roth at 103. Although documents that DEP received from DeVincenzo's office may not have generally indicated the persons who had first referred the "City Hall specials," DEP personnel staff knew or assumed that at least some of them had been referred by political figures. (Hochstadt at 121-23; Roth at 99; Sullivan at 11-13.) As Gilvary's testimony makes clear, see Section I.C.5, above, this assumption was correct.

²⁶¹ Jan. Tr. at 236-38; Roth at 107; Hochstadt at 144, 146-47.

²⁶² Kennedy at 39-41.

²⁶³ Id.

²⁶⁴ Jan. Tr. at 236, 274; Martin at 37-38; Roth at 113.

²⁶⁵ Hochstadt at 137, 143-44; Martin at 37-38.

candidate) or did not adequately explain why a Talent Bank candidate was not selected, problems ensued. The hire would not be approved or the reasons why a Talent Bank candidate had not been selected would be questioned.²⁶⁶

Accordingly, DEP's personnel staff took care to review the candidate disposition sheets when they were submitted by hiring bureaus.²⁶⁷ If a candidate disposition sheet indicated that a Talent Bank candidate was qualified but another candidate had been selected, Carfora "would bang the table and say 'If a person is a City Hall candidate [and] is qualified for the position, that person should be hired.'"²⁶⁸ The paperwork would then be returned to the bureau. The message thus conveyed was that a qualified Talent Bank candidate should be hired even if that meant passing over a more qualified candidate.²⁶⁹

Similarly, if a candidate disposition sheet failed to give a sufficient explanation for not interviewing or selecting a Talent Bank candidate, DEP's personnel staff would either contact the bureau and try to obtain an adequate explanation or return the paperwork to the bureau.²⁷⁰ On occasion, such "inadequate" paperwork was forwarded to DeVincenzo's office despite these screening efforts. And as Roger Martin, the then-DEP Personnel Director, explained, "Fred [Carfora] would be notified by City Hall and he would come flying down to my office and rant and rave about how inefficient and careless we were in letting that happen."²⁷¹

D. Leveraging Preferences: PAR Authority

DeVincenzo's office exercised extensive oversight authority, primarily through review of PARs, over DEP personnel actions. The various preferences that "City Hall specials" and Talent Bank candidates enjoyed in the hiring process at DEP were directly related to this oversight authority. DEP employees believed that in order to secure DeVincenzo's approval for

²⁶⁶ Jan. Tr. at 235-38, 286; Hochstadt at 144-46; Martin at 67-68.

²⁶⁷ Jan. Tr. at 247-48; Hochstadt at 152-54; Martin at 41-42, 45; Roth at 151-52, 154-56. Because they knew that they would not be questioned about the adequacy of the reasons given for not selecting candidates who had not been referred by the Mayor's Office, DEP's personnel staff reviewed only the explanations given for not selecting the Mayor's Office's candidates. Jan. Tr. at 247-48; Hochstadt at 155-56; Roth at 142, 155-56.

²⁶⁸ Jan. Tr. at 283.

²⁶⁹ Jan. Tr. at 282-85; Martin at 41-43.

²⁷⁰ Hochstadt at 153-55; Roth at 151-52, 154-55.

²⁷¹ Jan. Tr. at 284.

personnel actions, it was necessary to appease DeVincenzo by hiring City Hall candidates. DeVincenzo's oversight authority thus served as a lever by means of which these preferences were obtained.

Every month DEP submitted a post-audit and a pre-audit package of PARs to DeVincenzo's office. The post-audit package consisted of between 80 and 125 personnel actions that DEP could and did effectuate without DeVincenzo's prior approval. The pre-audit package consisted of between 15 and 25 proposed personnel actions; actions such as certain hires and promotions that DEP could not institute without the all-important "Joe D. letter."²⁷²

Pre-audit PARs were supposed to be turned around (*i.e.*, approved, disapproved or returned for additional information) within a few weeks of their submission to DeVincenzo's office.²⁷³ Those submitted by DEP, however, were plagued by chronic delays. Most pre-audit PARs were not approved within a month of their submission; generally it took a longer period, sometimes months longer, to secure an approval from DeVincenzo's office.²⁷⁴ Virtually every pre-audit package included actions that were subject to delays of up to six months.²⁷⁵

Pre-audit PARs relating to the hiring of "City Hall specials" or Talent Bank candidates, however, were not subject to such protracted delays. They were approved much faster.²⁷⁶ Thus, pre-audit PARs relating to the hiring or promoting of a non-referred candidate --- and particularly those in which an existing DEP employee or an outside candidate was promoted or hired over a referred candidate --- were the ones that were most likely to be subject to extended delays.²⁷⁷ DEP's employees did not fail to draw the lesson: delays were attributable at least in part to the Department's failure to hire a sufficient number of referred candidates.²⁷⁸

In response to Hochstadt's inquiries, members of DeVincenzo's staff assured her

²⁷² Jan. Tr. at 239-40; Roth at 135-36.

²⁷³ Jan. Tr. at 240; Hochstadt at 150.

²⁷⁴ Jan. Tr. at 240-43; Hochstadt at 150; Roth at 136.

²⁷⁵ Hochstadt at 165.

²⁷⁶ Jan. Tr. at 244; Hochstadt at 157-59; Roth at 143-44, 147. Prompt approval of a pre-audit PAR involving a "City Hall special" or Talent Bank candidate was another of the advantages these referrals enjoyed.

²⁷⁷ Jan. Tr. at 241-45; Hochstadt at 157-59; Roth at 163-64.

²⁷⁸ Jan. Tr. at 244-45, 262, 264-65, 275-77; Hochstadt at 168-70.

that delays were not attributable to deficiencies in the preparation of DEP's PARs.²⁷⁹ Sometimes, no explanations were given and those that were provided were viewed as inadequate by DEP's personnel staff.²⁸⁰ At times, members of DeVincenzo's staff told Hochstadt that they had not yet reviewed or discussed with DeVincenzo long-delayed pre-audit submissions.²⁸¹ Such inaction was alone sufficient, as Hochstadt testified, to "impl[y] to me that [DeVincenzo] didn't feel like looking at DEP's submissions" because he was dissatisfied with the agency.²⁸²

The implicit was sometimes made explicit. The "stock" explanation that Gilvarry gave to Roth when she inquired about delayed PARs was that "Joe was displeased either with the agency in general or with a particular action or with some other action which was holding up the rest of them."²⁸³ The cause of displeasure with the agency, as Roth understood, was DEP's failure to hire enough referred candidates and the cause of displeasure with a particular action was DEP's having chosen to hire or promote someone other than the Mayor's Office candidate.²⁸⁴

The dispositions that displeased DeVincenzo were not necessarily limited to pre-audit hires of non-referred candidates. Most personnel actions were subject only to after-the-fact or post-audit review and thus were beyond DeVincenzo's direct control. Accordingly, Hochstadt suspected that pre-audit actions may have been delayed because post-audit review by DeVincenzo's staff revealed other personnel actions in which referred candidates had not been hired.²⁸⁵

Regularly, as often as every month, Carfora met with DeVincenzo in an effort to obtain approval of long-delayed PARs.²⁸⁶ Prior to these meetings, DEP's personnel staff would brief Carfora about the details of the delayed actions and the reasons why approvals were

²⁷⁹ Hochstadt at 180-81.

²⁸⁰ *Id.* at 159-60, 162.

²⁸¹ *Id.* at 162-64.

²⁸² *Id.* at 164.

²⁸³ Roth at 141.

²⁸⁴ Jan. Tr. at 245-47; Roth at 141-43.

²⁸⁵ Hochstadt at 172-73. Of course, the perception of such politicization is in and of itself important.

²⁸⁶ Jan. Tr. at 276-77, 321-22; Hochstadt at 173-74; Roth at 160-61.

important to the agency.²⁸⁷ Because they understood that DEP had to "play ball" with City Hall by doing it favors and hiring Mayor's Office referrals, they also briefed Carfora about the recent hires of referred candidates.²⁸⁸ Carfora, in turn, used this information in his meetings with DeVincenzo to demonstrate the agency's cooperativeness and hopefully obtain approvals in return.²⁸⁹

These demonstrations of cooperativeness were generally not successful in obtaining the requisite "Joe D. letter" approving delayed personnel actions.²⁹⁰ But sometimes approvals were obtained.²⁹¹ Thus, the carrot of approval and the stick of delay led DEP to continue to play ball.

²⁸⁷ Hochstadt at 174-75.

²⁸⁸ Jan. Tr. at 319-20, 326-27; Hochstadt at 177-79.

²⁸⁹ Id. at 320-22.

²⁹⁰ Id. at 323-24.

²⁹¹ Hochstadt at 175-77; Roth at 161-62.

III

THE MAYOR'S OFFICE AND THE PERSONNEL PRACTICES OF THE DEPARTMENT OF TRANSPORTATION

The Mayor's Office also exercised extensive influence over the personnel actions of the Department of Transportation ("DOT") in the 1983-86 period. Vacancies in certain types of laborer positions were dominated by City Hall referrals and job candidates referred by City Hall enjoyed an array of advantages.

A. Cooperating With The Mayor's Office

Robert Jean, Joseph DeMarco and Marsha Singer, three DOT personnel officials in the 1983-86 period,²⁹² agreed in their testimony that the relationship between DOT and the Mayor's Office was a cooperative one with respect to personnel matters.²⁹³ For DOT, cooperation meant hiring and extending other favors for job candidates referred by the Mayor's Office. As Jean testified:

Q And by "cooperating," that means taking some of [City Hall's] candidates?

A Yes, playing the game the way it was supposed to be played.

Q And the game was, that you take their candidates--

A The game was to help them out. Not to take everybody they sent, and not to turn it into a total patronage number, but take a reasonable number, our share as a department, or however you want to put it.²⁹⁴

The oversight authority that DeVincenzo's office exercised over DOT's personnel

²⁹² During this time, Jean was the DOT Personnel Director; DeMarco was his deputy; and Singer was his staff assistant.

²⁹³ April Tr. at 42-43, 89-90; Jean at 56, 91-92; DeMarco at 146; Singer at 124.

²⁹⁴ Jean at 56.

actions was a decisive factor in DOT's cooperativeness. As DeMarco testified, "[w]e had a large number of actions each month, and it wasn't conducive to business if you didn't cooperate with [the Mayor's Office]."²⁹⁵ Jean testified that he knew "that other agencies had problems with City Hall getting [personnel actions] approved, the time [delays], and all that," but DOT cooperated and did not have such problems.²⁹⁶

In the belief that cooperation was important to fair and expeditious review of DOT's personnel actions, DOT's officials cooperated by hiring and extending preferential treatment to City Hall candidates.²⁹⁷

B. DOT Laborer Hiring

Hiring in at least four laborer titles --- ferry agent, deckhand, assistant highway repairer and debris remover --- was dominated by candidates referred by the Mayor's Office.²⁹⁸ No civil service list was in effect for these titles and, accordingly, provisionals were hired to fill vacancies.²⁹⁹ In general, DOT hired from lists of candidates sent by members of DeVincenzo's staff, usually Gilvarry or Hein.³⁰⁰ Some exceptions were allowed. If DOT had a candidate of its own and sought approval from DeVincenzo's office to have that candidate considered, approval was usually granted because of the cooperative relationship between DOT and DeVincenzo's office.³⁰¹

Jean, moreover, testified that Anthony Ameruso, then the Commissioner of DOT, instructed him to let him (Ameruso) know "if we were hiring any positions with a fairly large number of candidates where there was no education or experience requirements that City Hall might be interested in filling" so that Ameruso could make arrangements with DeVincen-

²⁹⁵ April Tr. at 89.

²⁹⁶ Jean at 91; see also April Tr. at 42.

²⁹⁷ April Tr. at 42-43, 89-90; Jean at 91-92; DeMarco at 38, 146; Singer at 124.

²⁹⁸ April Tr. at 12, 15-17, 69-74.

²⁹⁹ *Id.* at 14, 15, 74.

³⁰⁰ *Id.* at 22-23, 78.

³⁰¹ *Id.* at 23.

zo's office.³⁰² By making such arrangements,³⁰³ Jean explained, DOT obtained "credit" with the Mayor's Office: "[i]t was credit for yourself, in a business sense, as an agency, and a credit for him, as a Commissioner, in a sense, with the political establishment."³⁰⁴

DOT did not post vacancy notices for these job titles, and was not required to post by DeVincenzo's office, notwithstanding the 1978 mayoral directive requiring posting.³⁰⁵ Rather, DOT regularly endorsed or stamped "posting waived" on PARs relating to hires for these titles or indicated that the hire was a Mayor's Office candidate for whom posting was not necessary by writing out that fact or writing the letter "Z" on PARs.³⁰⁶ Nor did DOT's personnel staff believe that there was anything improper about not complying with the 1978 directive. As Jean testified, "[p]osting for vacancies was a procedure established by the Mayor's Office. If City Hall told you you didn't have to post, then you didn't have to post."³⁰⁷

Since DOT neither posted nor advertised vacancies in these laborer titles, candidates sent by the Mayor's Office did not compete with the general public. The hiring process at DOT for these positions was simple: absent exceptional circumstances, Mayor's Office candidates were hired.³⁰⁸ If DOT "rejected some [City Hall] candidates in favor of other candidates from City Hall," it would not encounter difficulties from DeVincenzo's office.³⁰⁹ Thus, DOT could and did reject a City Hall candidate who may have "reek[ed] of alcohol" or "look[ed] like a bum."³¹⁰

³⁰² Id. at 20-21. Jean testified that Ameruso also expressed uncertainty about whether he would be reappointed Commissioner after the 1985 mayoral elections. Jean at 91.

³⁰³ Such arrangements were made from time to time. (Jean at 34-37.) For example, Jean and Singer both testified that an arrangement was made to have assistant highway repairer vacancies filled by candidates from the Mayor's Office and from the rank and file in a lower-paying position, the motor vehicle operators title. Jean and Singer believed that this arrangement was agreed upon by Ameruso, DeVincenzo and the union leadership representing the motor vehicle operators. April Tr. at 19; Jean at 35-36; Singer at 63-66.

³⁰⁴ Jean at 91.

³⁰⁵ April Tr. at 15-16, 69, 74.

³⁰⁶ Id. at 81-82, 87.

³⁰⁷ Jean at 27.

³⁰⁸ April Tr. at 25, 75-76.

³⁰⁹ Jean at 49.

³¹⁰ Id.

At times, the lists of candidates forwarded by DeVincenzo's staff ranked the candidates in priority order.³¹¹ DOT's personnel staff understood that interviewing and hiring was to be done in accordance with the priorities stated on these lists.³¹²

DOT's personnel staff was not aware of any affirmative action component to the candidates DOT received from the Mayor's Office for these positions.³¹³ The only impression that they had concerning the ethnicity of candidates referred by the Mayor's Office was that for Ferry Bureau jobs and the higher-paying, more desirable assistant highway repairer position, the candidates from the Mayor's Office were comprised mostly of white males, and that most of the minority candidates referred by the Mayor's Office were referred for the lower-paying and less desirable debris remover position.³¹⁴ Statistics culled from DOT and Talent Bank records confirm that impression. For the calendar years 1984 and 1985, over 85% of assistant highway repairer, deckhand and ferry agent hires were white males. During the same period, over 70% of the hires for the debris remover position were members of minority groups or women.³¹⁵

C. "Special" Hires

In addition to laborer candidates, DOT regularly received candidates from DeVincenzo's office for a variety of jobs and accorded them various preferences in the hiring process.³¹⁶ A member of DeVincenzo's staff would call DOT and say that it was important that DOT find a job for the candidate or, in substance, state that a job should be found for the candidate.³¹⁷ DOT, accordingly, would review the qualifications of the candidate and seek to determine if there were any vacancies in the job titles for which the candidate might be

³¹¹ April Tr. at 78; see e.g., Attachment J.

³¹² Jean at 49-50.

³¹³ April Tr. at 83-84.

³¹⁴ Id. at 27-28, 85-86.

³¹⁵ For a complete statistical breakdown of these positions by gender and ethnicity, see Attachment H.

³¹⁶ Jean testified that he was unsure about the frequency with which DOT received such candidates but estimated that DOT received a "couple" each month and perhaps more frequently in 1985. (Jean at 69.) Singer "guesstimated" that DOT received as many as ten each month. Singer at 95-96.

³¹⁷ Jean at 68; Singer at 92-93.

qualified.³¹⁸

DOT sometimes "created" jobs for these candidates. That is, an agency as large as DOT often had budget authority for particular positions and, even though the bureaus at DOT which had such "vacancies" had no immediate plans to fill them, Mayor's Office candidates would be hired for these "vacancies."³¹⁹ In other words, the Mayor's Office candidates preceded the bureaus' plans to fill such openings. More often, however, DOT was able to "slot" a Mayor's Office candidate into a vacancy which one of DOT's bureaus was seeking to fill.³²⁰ If the Mayor's Office candidate, however, was not qualified for the particular job title or was seeking a salary higher than the maximum amount payable for the job title, DOT sometimes changed the job title for the vacant position to accommodate the Mayor's Office candidate.³²¹ Thus, the vacancy was adjusted to suit the candidate.

Some of these candidates, moreover, were "musts."³²² In other words, DOT had no discretion and had to hire the Mayor's Office candidate. As Jean testified, Ameruso could sometimes resist hiring particular Mayor's Office candidates but sometimes he could not.³²³ With respect to these musts, Ameruso "would say, we have to do this one."³²⁴

For example, DeVincenzo's office presented a candidate to DOT along with a particular set of duties he was to perform and DOT was required to find a title to fit the candidate's qualifications and duties. When DOT could not find a suitable title, an obsolete title --- Secretary to the Commissioner --- was resurrected. Although DOT had not considered filling the "vacancy" for this title, which had remained vacant since at least 1970, the Mayor's Office candidate was hired. When Jean told Commissioner Ameruso he found the appointment "ridiculous," he was told it was "one that we had to do."³²⁵

³¹⁸ Jean at 68; Singer at 95.

³¹⁹ Singer at 105-08.

³²⁰ Id. at 92-94.

³²¹ Id. at 96-98, 102-05.

³²² April Tr. at 40; Jean at 70; Singer at 105.

³²³ Jean at 70.

³²⁴ Id.

³²⁵ Id. at 71; see also April Tr. at 33-34.

D. Other Preferences Accorded To
Mayor's Office Referrals

A Mayor's Office candidate referred to DOT enjoyed advantages not otherwise extended to other job candidates. These advantages began at the time the agency initially contacted the candidate, continued through the interview and hiring process and sometimes extended through the employee's tenure.

A Mayor's Office candidate could expect to be contacted more quickly by DOT. DOT officials normally contacted candidates by mailing a form letter. However, Mayor's Office referrals were often telephoned the same day their names were received. They could then expect interviews within a day or two of the initial contact.³²⁶

After they were hired, Mayor's Office referrals were not dismissed without the approval of the Mayor's Office. As DeMarco testified, "in theory" DOT could simply dismiss a City Hall referral like a non-City Hall referral, "but, in reality, [DOT] probably didn't because there was a general aura about the Mayor's Office, and, I think, in general people had a concern not to take negative actions unless [there] were extraordinary circumstances."³²⁷ And, as DeMarco further testified, DOT's reluctance to dismiss Mayor's Office candidates was a function of "general concern" about possible "repercussions" from DeVincenzo's office affecting the review and approval of DOT's personnel actions.³²⁸

Thus, DOT notified DeVincenzo's office before it terminated a Mayor's Office referral.³²⁹ At times, DeVincenzo's staff would not oppose the employees' termination, but in some cases, they would request that the employee be given another chance or moved to another bureau.³³⁰ Because of the deference accorded to some of these Mayor's Office referrals, Singer described them as "like bad pennies" that the agency could not get rid of.³³¹ Jean recalled one particular, albeit extreme, example:

³²⁶ Singer at 125-26.

³²⁷ April Tr. at 88-89.

³²⁸ *Id.* at 89.

³²⁹ April Tr. at 39, Jean at 89-90; Singer at 42, 43, 121-122.

³³⁰ *Id.*

³³¹ Singer at 122.

There were a few musts. I remember one, and I don't remember the man's name, where the guy came in and he was behaving very strangely, and my staff in Appointments & Promotions came out and said that this guy is not too straight, he was rambling and babbling, and I went to the Commissioner and I said, "You know, this guy is a problem, but I understood it to be important to City Hall that he be put on," and he told me to hold off for a while and he would check it out, and at a certain point, he said, "Look, we have to find something for him," and we put him in the Parking Violations Bureau.

After about two weeks, I got a call from them that he was very disruptive, and I went to the Commissioner again and I said, "This guy is very bad, he's, obviously, not all there," and, again I was told, at a certain point, that we should give him another chance somewhere else, and we put him in Ferries for a while, and I think he fell down a ferry hatch, and I don't know what happened to him. He was injured. He was on Workmen's Compensation. I don't know what happened to him after that.³³²

³³² April Tr. at 40-41.

IV

CONCLUSIONS

A. Causes Of Patronage Abuses

The Talent Bank, established for laudable purposes, went awry for a combination of reasons. First, it was part of the consolidation of Citywide personnel authority in the Mayor's Office, most particularly in one mayoral assistant, Joseph DeVincenzo. By 1983, when the Talent Bank was created, DeVincenzo had authority over "just about everything that can happen to a City employee." DeVincenzo's powers over hires, promotions, transfers and salary increases provided him with the means by which he could and did make sure that agencies hired candidates referred by political figures, even though the formal hiring authority remained with the agencies.

Second, the consolidation of personnel authority in the Mayor's Office coincided with large and steady increases in the number of provisional and discretionary hires. The ability of the Mayor's Office to give preferential treatment to candidates referred by political figures was obviously severely circumscribed with respect to candidates hired from lists resulting from competitive civil service examinations. The increase in the number and percentage of positions filled without regard to such lists increased the opportunities for hiring based on political considerations.

Ultimate responsibility for the Talent Bank, however, belongs to the Mayor, who created it, publicly announced its creation, and appointed DeVincenzo to run it. By creating the Talent Bank and investing it with both an affirmative action and a political mission, the Mayor directed that it serve two unequal masters. In retrospect, it can be seen that, given the danger that the political objectives of the Talent Bank would overwhelm its affirmative action goals, and given the announced importance of the Talent Bank, strong measures were required to monitor the situation and act decisively to prevent the abuses which developed.

The Mayor did not make clear the importance of the Talent Bank's affirmative action goals to his aides who ran it or had dealings with it. Jerry Skurnick, for example, testified that affirmative action was not one of the Talent Bank's major objectives, and DeVincenzo certainly did not take this goal seriously. That DeVincenzo may have been acting on his own in giving preferential treatment to candidates on the basis of their political sponsorship is beside the point. He was exercising mayoral authority, and his actions demonstrated a failure by the Mayor to communicate effectively his views of patronage to the

person to whom it was most crucial that he do so.

Nor did the Mayor take adequate steps to monitor the Talent Bank's performance. He did not learn until 1986 that high-paying laborer jobs had been filled overwhelmingly by white males referred by political figures and that LoCicero and DeVincenzo were soliciting candidates for those jobs from certain county leaders. Brezenoff, however, knew these facts by February 1985 at the latest. That Brezenoff did not bring them to the Mayor's attention until 1986 indicates that the Mayor had not impressed upon his chief assistant the importance of the Talent Bank's affirmative action goal and his disapproval of patronage.³³³

B. Consequences Of Patronage Abuses

Patronage inevitably results in serious consequences for integrity in government; prominent among them are impaired employee professionalism and morale, decreased administrative effectiveness and the distortion of public values by ulterior private influences. The patronage practices revealed by the Commission's investigation did yield these results.

1. Impaired Professionalism And Morale

The intrusion of political considerations into the personnel practices of DEP and DOT had indisputable, if not readily quantifiable, adverse consequences on those agencies' employees. These consequences are decidedly relevant to integrity in government because a work force that enjoys a high sense of professionalism and morale is less vulnerable to corruption than a work force in which cynicism and insecurity prevail.

Several members of DEP's personnel staff stated that political connections and considerations affected hiring and promotion at that agency. Evidence supporting that perception includes the extent to which the Mayor's Office dominated laborer hiring; its efforts

³³³ There are other examples of the effect of inadequate communication of policy concerning the Talent Bank and patronage. The Talent Bank-related activities of John LoCicero, Skurnick's immediate superior and a political advisor to the Mayor, are inconsistent with a clear understanding of the Talent Bank's stated goals. In the solicitation of laborer candidate referrals from county leaders, LoCicero failed to take effective steps to ensure that these key sources of candidates referred minority and women applicants. (April Tr. at 180-81, 207-08.) Also, the fact that documents reflecting the referral sources of candidates were systematically destroyed, and referral source information deleted from the Talent Bank computer, is persuasive evidence that those involved in the document destruction at least belatedly understood that there was something wrong with what they had been doing. If the unacceptability of these practices had been communicated unequivocally to them previously, the practices and documents would not have existed, and there would have been no occasion for destruction of the records.

to push referred candidates; the preferences those candidates were accorded; the rules bent for those candidates' benefit; and the chronic delays imposed on personnel actions of DEP by the Mayor's Office.

The chronic delays in hiring staff at DEP, which occurred with a "fair amount of regularity,"³³⁴ had a particularly significant impact on morale precisely because of the widespread perception that these delays were caused by political considerations. As former DEP Personnel Director Roger Martin testified:

The morale impact, I think, was extensive, particularly among the upper management personnel. When you, as a city manager, are charged with the responsibility of carrying out a mandate of the agency and providing service to the public, and you are unable to fill your vacancies and staff up to the level at which you can complete those responsibilities, your morale has to suffer, because you're being called upon to do a job for the citizens of the City, and not being given the resources, that is, the personnel in order to do that job, and yet you're being held accountable to do the job....

That's a very heavy morale burden on a manager, not to have the resources and staff to be able to accomplish the work that he's supposed to accomplish, and if the reason for that is a political reason, that's twice as bad.³³⁵

DEP Personnel staffers Cassandra Kennedy and Sherri Roth, and undoubtedly many others, were troubled by the preferential treatment that the Mayor's Office referrals enjoyed. Kennedy found it frustrating to be unable to help laborer applicants who came "off the street" without connections, many of whom were members of minority groups,³³⁶ especially because those who were being hired were predominantly white males.

A sense of cynical resignation among at least some DEP employees was another result of the intrusion of political considerations into DEP's personnel affairs. Roth testified that while most of DEP's administrative staff were aware of and annoyed by this intrusion, many simply accepted it as part of "life in the big city."³³⁷

³³⁴ Jan. Tr. at 241.

³³⁵ *Id.* at 286-87.

³³⁶ Kennedy at 28.

³³⁷ Jan. Tr. at 263.

At least some DEP employees, however, could not so easily reconcile themselves to the extent to which political considerations affected DEP personnel practices. Christopher Sullivan, a DEP personnel staff member from January, 1984 to May, 1985, left DEP because he became so disaffected by what he described as "unprofessionalism", "bending over backwards to City Hall," and "political cronyism" relating to the intrusion of the Mayor's Office into his work.³³⁸ He testified, moreover, that he and his colleagues felt that they were unfairly excluded from consideration for jobs which went to applicants referred by the Mayor's Office.³³⁹

The morale of DOT employees also suffered. Robert Jean, a former DOT Personnel Director, and Marsha Singer both testified that they were concerned with the effects on morale when, for example, employees with political connections received large salary increases or were hired at disproportionately high salaries. As Jean put it:

It was difficult on the part of some of my subordinates when they saw somebody -- someone who they had signed up and who they knew did not sound like someone who was capable or someone they dealt with that they knew was incapable, and they would be getting a large increase and they would know that through that person's connections either politically or personally, that they got there. It had a bad effect.³⁴⁰

In addition, the perception that some employees enjoyed protection against dismissal because they had been referred by the Mayor's Office further damaged morale.

There was also a sense of resignation at DOT. Jean testified that while he tried to hide from lower level staff the fact that politically referred candidates were being hired, often at higher salaries than theirs,³⁴¹ when they did become aware of it he passed on to them advice he had received in 1970:

[W]hen I first came to work for the department, it bothered me, and I went --- my boss had to sit me down --- my boss at that time was the Personnel Director, Edward Rossomondo, and he said to me, you have to learn to deal with this, because the

³³⁸ Sullivan at 5.

³³⁹ *Id.* at 83.

³⁴⁰ April Tr. at 63.

³⁴¹ *Id.* at 49.

Mayor does have the right to bring in his own people; and he also said that, on a number of occasions --- and I have said that to my own people, too, at times --- that you have to make a choice. If you feel that these people --- or that you would be better off by becoming politically active and referred this way, then follow that path, but if you're not, then you have to put up with this and do your job and not let it affect you.³⁴²

These are convincing expressions of the impact of political patronage on employee morale. As the perception of patronage spreads, it reduces the attractiveness of city government service as a career and can have a negative long-term impact on the quality of public service that cannot be measured. The existence of patronage saps incentive for meritorious service and diminishes penalties for substandard performance. Career employees can become demoralized and cynical about their work. When they are committed to the mission of the agency, they see that mission frustrated by political considerations. The cynicism may be accompanied by resentment or resignation; in either case, employees' sense of professionalism is demeaned because it receives limited reward or recognition. Worse, employees see themselves compromised because they are required to participate in the patronage practices they find offensive. And, inevitably, their motivation to oppose corruption is lessened.

2. Impaired Economy And Effectiveness In Pursuing Public Objectives

The ability of the Talent Bank, DEP and DOT to serve their functions was also directly affected by patronage practices. First, and most obviously, a major objective of the Talent Bank, to increase hiring of women and members of minority groups, was seriously undermined. As the evidence before the Commission demonstrates, the Talent Bank's chief concern from 1983 to 1986 was to facilitate the hiring of candidates with political pedigrees. Consequently, the Talent Bank referred for hire lower percentages of minorities and women than the City as a whole hired in fiscal years 1983-84, 1984-85 and 1985-86. A particularly stark example of the subversion of announced governmental values is presented by the hiring of two classes of DOT laborers --- the mostly white assistant highway repairers, deckhands and ferry agents and the mostly minority and female debris removers.³⁴³

³⁴² Jean at 103-04.

³⁴³ April Tr. at 27, 86.

City resources were misused: DEP and DOT regularly hired candidates referred by the Mayor's Office for positions that the agencies had no current plans to fill. In substance, jobs were created for Mayor's Office referrals, regardless of the agencies' actual needs, through efforts to find vacancies for which there was budget authority. And legitimate needs were altered to suit Mayor's Office referrals.

At the same time, jobs that the agencies needed to fill were not staffed. DEP was often unable to hire needed staff promptly. Laborer vacancies regularly remained unfilled because of an insufficient number of Mayor's Office candidates despite the availability of qualified, but "unconnected" candidates. Chronic delays in obtaining PAR approvals from the Mayor's Office, which DEP staff believed resulted from not "playing ball" with DeVincenzo, affected DEP in other ways. As Roth explained:

When you had a new hire, somebody who perhaps was either not working or somebody looking for a new job, and perhaps it was delayed because a Talent Bank person hadn't got a job, people aren't going to wait four or five months or six months to be hired, and we would lose a lot of people by the time we got an actual approval that somebody could start. * * * So that's when it would really hurt. You would wait for four months, five months, and have a vacancy for this amount of time; we finally get the approval, the person is gone, you have to start all over again.³⁴⁴

Roger Martin also testified to the inevitable consequences these delays had on DEP's efficiency:

You would have programs that wouldn't be put into effect, because the staff wasn't brought on in a timely fashion and, basically, it gummed up the works, and the agency was less efficient.³⁴⁵

Pressures from the Mayor's Office, moreover, led DEP and DOT to hire candidates on occasion who were at best marginally qualified. And the oversight authority wielded by DeVincenzo's office led DOT to retain some Mayor's Office referrals who would have otherwise been dismissed.

³⁴⁴ Roth at 138.

³⁴⁵ Martin at 64.

These, of course, are classic examples of the effects of patronage practices on administrative effectiveness. To the extent that they result in the compromising of government's legitimate needs, they are also examples of corruption.

C. Other Consequences Of The Mayor's Office's Practices

Apart from these consequences, the Commission's investigation uncovered other troubling matters.

First, there was a clear sense that hiring rules and procedures could and should be manipulated to satisfy the Mayor's Office. For example, posting requirements for certain positions were routinely waived at DOT in order to find jobs for Mayor's Office referrals. At DEP, those rating the qualifications of job candidates learned to "fudge" the scores in order to resist pressure from the Mayor's Office to hire its referrals.

Another, potentially more damaging consequence concerns the fear of reprisal for cooperation with government investigators. This Commission observed a striking difference between the candor and forthrightness of witnesses who were no longer in the City's employ, and some of those who were still on the payroll, especially provisional employees. The former, on the whole, were much more willing than the latter to recall and describe details of the personnel practices they witnessed. Some current employees were explicit in voicing fears of retaliation if the fact or substance of their testimony were to come to light.

In addition, many of those employees directly involved in the execution of the patronage practices also participated in the 1986 destruction of documents and were less than candid in their sworn testimony concerning both their role in the patronage operation and the document destruction. The destruction of documents and the lack of candor are among the most serious byproducts of the patronage practices disclosed by the Commission's investigation. While they may not be inherent to patronage, they should not come as a surprise. After all, patronage employees, and particularly those who are provisional employees, lack job security. If there is corrupt behavior, which they might otherwise report or resist, they may be less free to do so because it may cost them their jobs. As Robert Jean testified when asked about the effect provisional employees had on DOT administration:

From what I know from what happened in PVB when Jeffrey Lindenauer was talking about the hand held computers and they had a committee of people reviewing this, most of those people were provisional and were beholden --- not necessarily beholden to them, but he had a lot of power over a lot of his subordinates

that he wouldn't have if they were civil servants and at some point, might have felt protected enough to say, no, I'm not going to sign this or, I'm not going to do this, but if you're in a position where you were vulnerable where you're provisional, or even past a certain point as a manager, where someone can turn around and when you say, no, I don't think this is right, or, I'm not going to sign this, where you can lose your job or be demoted, it's very unlikely that you'll say, "No," and in that sense, yes, I think it hurts the City.³⁴⁶

³⁴⁶ April Tr. at 65.

V

RECOMMENDATIONS

A. Patronage Has No Place In Public Personnel Systems.

The harm that results from patronage extends beyond the individuals whose jobs are affected directly and the agencies where it most predominates. Its presence in even a limited way undermines government, for it subordinates the authority of government officials to unaccountable political powers. By injecting ulterior and illegitimate influences in place of formal standards and procedures, patronage impairs the integrity of government. Involving as it does the deploying of public resources to serve private political objectives, patronage, though it may not be either unlawful or invidious in intent, is itself a breach of the public trust. It simply has no legitimate place in a public personnel system.

There is a limited place, acknowledged in civil service law, for political considerations to play a part in hiring for top-level policy and professional or confidential positions, that is, at the Commissioner and perhaps Deputy Commissioner levels. In acknowledging the appropriateness of such "political appointments," it is important to define clearly what they are and how they differ from patronage hiring.

In these few, very senior or confidential positions, it is important for an elected chief executive to be able to select staff who will share his viewpoint about policy directions, who will be accountable to him, serve at his pleasure and wholeheartedly share his agenda. As with federal cabinet appointments, political considerations may be relevant, but merit-based qualifications are also a sine qua non.³⁴⁷

Experts consulted by the Commission were unanimous in describing the proper role for politically influenced hiring in a public personnel system as a limited one. They pointed out that the number of such positions in a municipality like New York City should be on the order of a few hundred, not thousands. The entire federal government, with more than two million civilian employees, includes only some 3,000 political appointees, and a recent in-depth study ended with the recommendation that the number be reduced to not more than

³⁴⁷ Because merit is crucial, and because the reasons for discretionary hiring relate to policy, not just politics, this is not patronage. Patronage is something else. It places politics equal to or above merit, and dictates hiring, salary, promotion and firing (or immunity from firing) based on political factors.

2,000.³⁴⁸

Despite the concrete adverse effects which accompany patronage, strong pressures remain to adopt such practices in government. These pressures are brought to bear by political and elected government officials who sometimes expect that the benefits of government, including jobs, will be used to reward the supporters of those holding power or to appease those who might otherwise be their opponents. Accordingly, they call on government decisionmakers to provide such rewards for their support.³⁴⁹ The perceived need of elected leaders to build coalitions in order to stay in office or to gain acceptance for their programs adds force to these pressures. Where those in elected office view government jobs as in some sense "theirs" to award, they themselves become more vulnerable to these pressures from without.³⁵⁰

The chief executive must meet these inevitable pressures with forceful and unequivocal communications of the government's policy that patronage will not be tolerated. This communication must go beyond public statements. The chief executive's staff must have no doubt about this policy or the consequences that will follow if it is breached. Effective internal controls and oversight mechanisms should be in place to detect and correct any weakness in this respect.

B. The Personnel System Must Be Restructured To Discourage Patronage Abuses

The personnel system must be structured so as to protect against the possibility of employment decisions based on political ties. Procedures must be put in place to assure merit-based, open hiring throughout the system, and that political appointments are restricted to those very few positions discussed above. Whenever possible, the day-to-day processes of hiring, promoting, disciplining and dismissing public employees should be governed by institutionalized procedures and routinely left to the trained professionals in the appropriate

³⁴⁸ Leadership for America: Rebuilding the Public Service. The Report of the National Commission on Public Service (Volker Commission). Washington, D.C., 1989, p. 7.

³⁴⁹ LoCicero and Brezenoff both testified that county leaders complained that job candidates they referred were not obtaining jobs in sufficient numbers. April Tr. at 395-96, 490.

³⁵⁰ This is one reason that the Commission rejects the argument that "all other things (in terms of merit qualifications) being equal," it should be acceptable to prefer the politically referred applicant for a position at any level of government. Where political considerations for lower and middle level jobs are allowed any play, they open the door to abuse. The way is opened for political factors to outweigh merit-based decisions in day-to-day actions of the employee who owes his job to politics. Inequities develop in access to employment opportunities, so that the politically connected have an advantage. Other employees, equally meritorious, come to feel that without a political sponsor their chances of advancement are inferior.

agencies, namely, the Department of Personnel and the personnel departments within mayoral agencies. While there must be effective oversight mechanisms in place, to assure that what is expected is what is done, staff within the Mayor's Office should not be charged with case-by-case review of personnel actions. Nor should those oversight procedures be controlled, on a day-to-day basis, by the same individual or group of individuals that controls the recruiting and hiring process. The Mayor, of course, should retain the power, indeed responsibility, to dictate overall policy objectives to Commissioners of all agencies, including the Department of Personnel, and the authority to require that specific steps be taken to attain those objectives.³⁵¹

Specifically, the Commission recommends the following steps:

1. Staff within the Mayor's Office should have no role in individual day-to-day personnel decisions, such as Planned Action Report ("PAR") and Managerial Position Description ("MPD") review procedures.
2. A separate Appointments Office should be established for senior, policy-level positions.
3. Firm requirements should be adopted for providing widespread notice of employment opportunities. In addition to posting, advertising in newspapers of general circulation should be required. Posting and advertising should be required by law, not by a waivable mayoral directive.
4. Where the threshold requirements of certain jobs make it likely that large numbers of people can qualify and traditional screening procedures might be inequitable, other procedures such as lotteries should be used to ensure that the opportunities for such jobs are fairly distributed.
5. The percentage of provisional employees in the City personnel system should be drastically reduced. If overhaul of the civil service procedures is required to accomplish this, a commission should be empaneled to study and recommend effective changes.

³⁵¹ These might include, for example, directives to fill vacancies only in cases of urgent necessity; to authorize appointments only after reviewing evidence of an affirmative action search; to encourage speedy appointment of environmental protection inspectors needed for a new program, and the like.

1. The Mayor's Office Should Not Have A Day-To-Day Role In Personnel Decisions

As discussed above, the consolidation of the power to refer job candidates to agencies and the power to review agency personnel actions in the Mayor's Office unit under Joseph DeVincenzo was the crucial factor in the patronage practices disclosed by the Commission's investigation. DeVincenzo's authority over the PAR and the MPD process provided the muscle by which politically referred candidates were leveraged into DEP and DOT. The testimony of DEP and DOT witnesses vividly demonstrates that they "played ball" with DeVincenzo precisely because he exercised such extensive authority over their personnel actions.

Staff within the Mayor's Office should not be directly involved in the oversight of routine personnel decisions. They should be handled by the Department of Personnel, in conjunction with the Office of Management and Budget, which are responsible for establishing personnel procedures and reviewing personnel decisions.³⁵² Within that framework of oversight, appropriate control over hiring and firing should be delegated to the operating agencies.

Removing day-to-day oversight responsibility from staff within the Mayor's Office itself would not unduly impair the Mayor's ability to make sure that the personnel system is well run, that its leaders follow his agenda or that they are accountable for its performance. To the contrary, the Commissioner and Deputy Commissioners in the Department of Personnel, as well as in the Office of Management and Budget, are directly accountable to the Mayor for the effective performance of their duties, and the policies and practices they are to implement could be dictated by the Mayor. The current practice, which involves staff within the Mayor's Office in a second layer of detailed review, serves no essential purpose (and, in fact, is cumbersome and counterproductive to effective management) but makes much more likely exactly what happened in this case: the introduction of political considerations into personnel practices.

2. A Separate Appointments Office Should Be Established

The Mayor's Office should have direct authority over only the small number of senior employees and other narrowly defined confidential employees for whom direct accountability to the Mayor is important for reasons of policy. A separate office, removed from

³⁵² It would be appropriate, for example, to establish an internal control system within the Department of Personnel and individual agencies to monitor compliance with prescribed personnel procedures.

the rest of the civil service and personnel system, should handle those few appointments.³⁵³

Consideration should be given to the establishment of a screening panel, similar to the Abrams panel,³⁵⁴ to evaluate the merit qualifications of potential policy-level appointees. In any event, to the extent that political considerations are involved in these appointments they should be clear, public and open.

3. Widespread Notice Of All Vacancies Should Be Required By Law

The Mayoral Directive requiring posting of all job vacancies was waived or ignored regularly, particularly when DOT and DEP were hiring large numbers of employees for relatively unskilled jobs; in other words, precisely in the kind of hiring where posting was especially important to the goal of attracting a wide pool of qualified candidates. Since posting procedures were required by the Mayor's Office, DEP and DOT personnel staff viewed posting as a requirement the Mayor's Office could waive. But waivers of this kind simply enhance the possibility that patronage practices will exist and serve to narrow the availability of applicants and reduce desirable competition for jobs.

Posting and advertising are fundamental to an open and equitable public hiring system. Requirements for posting of vacancies, and even wider notification of the availability of positions for which there are or may be large numbers of vacancies, should be rigorously enforced, and certainly not relegated to a position that "he who gives can take away." The requirements should be clear and unequivocal, and should have the force of law.³⁵⁵

³⁵³ Some have recommended that the Mayor's Office be allowed to participate in recruiting and referral of City employees, so long as it does not also have responsibility for routine oversight review of personnel actions. Others oppose such a role for the Mayor's Office, since this, itself, would create the risk of politicizing those decisions.

The Commission opposes a system which involves the Mayor's Office in receiving political referrals of the names of candidates for government employment. As a practical matter, once the notion of political referrals for City jobs has been given an institutional blessing (as by creating an office through which such referrals are processed) the way is that much more clear for it to be abused, for "all other things" not to be so equal, and for those within and outside the system to believe that they are not.

³⁵⁴ Under present practice, the Mayor's Committee on Appointments, chaired by Floyd Abrams, submits recommendations to the Mayor from which the Mayor appoints members of nine commissions and boards, subject to confirmation by the City Council.

³⁵⁵ If there are circumstances which might warrant departure from the requirement, the possible range of circumstances should be statutorily prescribed and a procedure should be established to ensure that exceptions are made rarely, for documented reasons, as authorized by appropriate reviewing personnel, and are open to public scrutiny.

4. Open And Equitable Selection Procedures
Should Be Adopted For All Positions

There are potentially a significant number of positions for which traditional testing methods may not be suitable screening devices. Among these are possibly a number of jobs, such as laborer jobs, for which there may be minimum qualification requirements, yet which command relatively high salaries, and thus would be attractive to a large number of applicants.³⁵⁶ In these situations, alternative procedures must be developed, to ensure that these positions are available on an open and equitable basis, and selections among those qualified are made in a fair way. The lottery procedure adopted by the Talent Bank in recent years seems one viable alternative. Certainly others can also be developed. The standard must always be that the procedures be open and available on an equitable basis to all who qualify.³⁵⁷

5. The Percentage Of Provisional
Employees Must Be Drastically Reduced

One of the critical tasks of the Department of Personnel must be to reduce the percentage of provisional employees and other discretionary hiring in the City personnel system. The number and percentage of provisional employees in New York City government today are shockingly high and increasing annually.

There are currently more than 30,000 provisional employees (over 20%) in the work force in the mayoral agencies alone.³⁵⁸ In addition, there are over 2,000 employees in positions to which they were provisionally promoted, nearly 12,000 employees in non-competitive positions, and over 750 employees in exempt classifications. Thus, more than 30% of the City's work force are in discretionary positions in their current jobs. In 1978, only 3% of the work force held provisional positions, and only 10% were in discretionary positions.³⁵⁹

³⁵⁶ During the time period covered by this investigation, certain laborer positions for which there had been competitive testing requirements were reclassified by the State Civil Service Commission, at the City's request, into non-competitive Laborer Class titles. The Commission cannot and does not comment on the appropriateness of particular classifications. The crucial requirement is that all positions, whether competitive class or laborer class, be openly and equitably available to those who qualify.

³⁵⁷ Other positions may also be difficult to test for in the traditional manner historically used in civil service systems. In all these cases, the principle remains the same: selection procedures must be devised which will make these positions available on an equitable basis to those who would be qualified to perform the work.

³⁵⁸ This excludes the Transit Authority, the Department of Education, the Health and Hospitals Corporation, and the non-pedagogical component of the City University system, as well as other agencies with fewer employees.

³⁵⁹ See Attachment D.

The experts consulted by the Commission have unanimously described these figures as "shocking," "astonishing," "alarm bells." One has said they represent the "demise of the civil service system." It has been said that these figures cannot be appropriate within the terms of the Civil Service Law and rules, particularly the provision of state law which provides that employees hired provisionally cannot remain for more than nine months without going through civil service procedures.³⁶⁰

This high percentage of provisional employees has important implications for integrity in government, some of which are reflected in the circumstances of this case. For example, provisional employees are, by definition, very vulnerable.³⁶¹ To quote one expert, "there is no such thing as a 'provisional whistleblower.'" Also, an environment so full of discretionary hiring lends itself readily to patronage abuse, particularly when no safeguards exist to prevent that from happening.

The civil service system faces enormous pressures, and the recent growth in the number of provisionals stems from several causes.³⁶² Other jurisdictions, however, have experienced similar pressures, have devoted considerable resources to study and reform of their merit-based public employment systems, and have developed techniques which show much promise. This Commission has not undertaken such a study. But the portion of New York City's hiring and personnel practices the Commission has examined in depth dramatically highlights today's problems, and points the direction for what remains to be done.

The New York City civil service system is in a state of crisis. Anecdotal evidence related by experts, and confirmed by a number of Commission staff interviews, suggest that the Civil Service Law is now widely regarded as something it is desirable to bypass or avoid, where possible. Adherence to the law is viewed as hampering the effective recruitment, deployment, and retention of qualified workers. The expression "civil service mentality" is a pejorative description of a bureaucrat who mindlessly follows rules and cannot get anything done.

³⁶⁰ New York Civil Service Law § 65.2. The New York State Civil Service Commission, which oversees the City system, has not audited the City since before 1978. Commission on Government Integrity staff were told it would require all the audit resources of the entire State Commission for over a year, to perform such an audit.

³⁶¹ Although the most recent City union contracts provide for some job security for employees who have been provisional hires for more than two years in the same title (itself a recognition of serious problems of compliance with the letter of the civil service laws), these safeguards do not apply to managerial employees.

³⁶² For example, intense pressures both from lawsuits over the unequal impact of the tests used in public hiring, and from the vastly increased demands placed on City employees to deliver complex services, have hindered the City's ability to recruit employees in the manner it did years ago.

Clearly, more is needed than just effective enforcement of current law; more is needed than even a dedicated audit by the State Civil Service Commission could provide. One high-level employee described what is needed as a "Moreland Act Commission focusing solely on the civil service/personnel issues."³⁶³ There are skills, talents and experience in the private sector, and in other jurisdictions. All should be enlisted for a comprehensive attack on the problem.

Dated: New York, New York
August 1989

**STATE OF NEW YORK
COMMISSION ON GOVERNMENT INTEGRITY**

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Chairman

Richard D. Emery

Patricia M. Hynes

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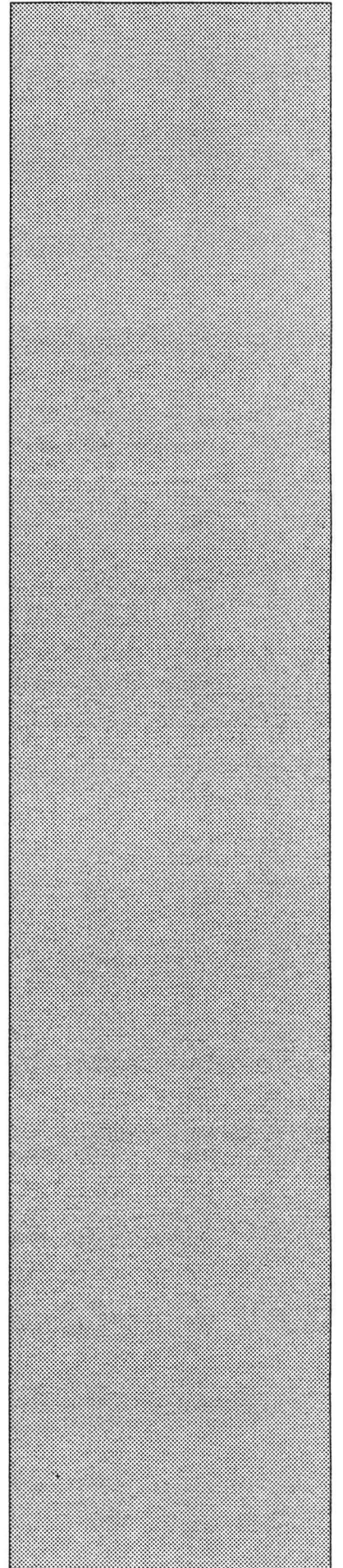
Bernard S. Meyer

Bishop Emerson J. Moore

Cyrus R. Vance

³⁶³ Since mid-century, the New York City public personnel system has been the repeated subject of detailed expert study and comprehensive reform (e.g., Mayor's Committee on Management Survey (1952); Josephs Commission on Government of New York City (1958)) but it has been some fifteen years since anyone studied the City personnel system in any comprehensive way.

Appendix



APPENDIX

DEVINCENZO'S RETIREMENT

A. Introduction

Little more than a month after the Commission's January 1989 public hearings at which DeVincenzo testified, he retired from City service at age 46. Prior to his retirement, DeVincenzo took a number of steps --- consistent with current law --- which had the effect of locking in his eligibility for a \$52,000 annual pension before any pending investigation of his conduct could be concluded.

The Commission has previously examined the subject of pension forfeiture for public employees engaged in wrongdoing.¹ DeVincenzo's ability to retire before any action could be taken which might have jeopardized his lucrative pension prompted the Commission to explore the details of DeVincenzo's retirement as an illustration of the operation of the current pension law in the absence of a forfeiture provision.

B. Navigating The Shoals Of The New York City Retirement System

1. DeVincenzo's Dealings With The Retirement System

By dint of his authority, DeVincenzo was able to command the personal attention of the senior staff of the New York City Employees' Retirement System ("NYCERS"). Virtually every step of the processing of DeVincenzo's retirement papers was preceded by extensive consultation with retirement system officials designed to maximize the chances that his retirement plans would not be made known to his employer, the Mayor, or to the New York City Department of Investigation ("DOI") and to minimize the likelihood that disciplinary action could be taken against him before he retired.²

Early one morning in January 1989, DeVincenzo met Harold Herkommer, the

¹ The Commission's recommendations for pension forfeiture legislation are set forth in its report, "Crime Shouldn't Pay: A Pension Forfeiture Statute for New York" (May 1988).

² Under the applicable retirement law of New York State, a public employee who perfects his retirement application and retires before any disciplinary action is taken, is entitled to receive a pension, whether or not he or she is subsequently convicted of a crime.

executive director of NYCERS, at the corner of West Broadway and Chambers Street. This meeting had been arranged at DeVincenzo's request, on the theory that it would be imprudent for him to be seen at Herkommer's office at 220 Church Street.³

From the corner, they walked to a nearby diner. There, DeVincenzo posed certain questions: Who would be notified of his retirement? When would his retirement become effective? How does NYCERS count the 30-day minimum waiting period between the time an application to retire is first filed and an employee's earliest effective retirement date?⁴

The last question, in particular, was one to which DeVincenzo returned over and over again in the course of the next several weeks. Under the rules of the Uniformed Sanitation Force retirement plan for which DeVincenzo was eligible, a retiring employee must provide the City with a minimum of 30 days notice before his retirement can become effective. According to the retirement system's rules, the employee who puts in for retirement in 30 days must still be on the City payroll on the 29th day of the waiting period in order to collect his pension.⁵ If at any point prior to the 30th day, the employee is discharged, he loses his right to a pension altogether. If he is demoted and his salary reduced, his pension is proportionally diminished, since the lion's share is based on the employee's salary on his last day of service.⁶

Herkommer estimated that he had at least half a dozen discussions with DeVincenzo or his aides in January and February 1989 about how the 30-day minimum waiting period was to be reckoned and what would be his earliest retirement date.⁷ Not once did DeVincenzo personally appear at NYCERS' office. When he wanted to speak with Herkommer, he arranged to meet him out of the office, or called him at home or from a pay

³ April Tr. at 279-81. As Herkommer stated in private testimony to the Commission, "If a Commissioner walks into my office, all the phones start ringing that day, and the next thing, the Mayor is told, you know, hey, so and so is leaving you." Herkommer at 24.

⁴ April Tr. at 281-82; Herkommer at 46-47.

⁵ See Rule 25 of the New York City Employees' Retirement System:

Except as otherwise provided within these rules, service retirement and ordinary disability retirement shall take effect on a date not less than thirty days nor more than ninety days after the date of filing of application for retirement with the Board of Trustees while in city-service, provided that as to service retirement, applicant was also in city-service on the day prior to the effective retirement date.

(emphasis added.)

⁶ April Tr. at 299-300.

⁷ Id. at 300-01.

phone. Aides delivered and retrieved the necessary retirement papers.

On Friday, January 20, 1989, Jean Ross, DeVincenzo's secretary and administrative assistant, appeared at NYCERS' office with DeVincenzo's retirement application. Both Herkommer and NYCERS' deputy executive director had left for the day. In their absence, DeVincenzo's retirement application was rejected by the supervisor of NYCERS' Information Room because the application was unsigned and the space where the retirement date was to be filled in had been left blank.⁸

Ross reached Herkommer at home by telephone from NYCERS and informed him of the difficulties she was having with the processing of DeVincenzo's retirement papers. After briefly discussing the possibility of taking the papers back to DeVincenzo for his signature and then returning to NYCERS that day, they decided that an aide would bring the papers in on Monday, January 23.⁹ Herkommer assured Ross that he would be in his office, as usual, at 7:30 a.m. to receive DeVincenzo's retirement papers personally.

On Monday, January 23, 1989,¹⁰ Herkommer arrived at the office shortly before 8 a.m. to find that Robert Valenotti, an aide in DeVincenzo's office, had already called to check if Herkommer was in. Minutes later, Valenotti appeared and delivered DeVincenzo's retirement application.¹¹ The effective retirement date chosen by DeVincenzo was 90 days

⁸ *Id.* at 287-90.

⁹ April Tr. at 289. These arrangements were confirmed over the weekend of January 21 and 22 in the course of several additional telephone calls to Herkommer's home from DeVincenzo and Ross. *Id.* at 290-91.

¹⁰ Herkommer testified that after he received DeVincenzo's retirement application on January 23, he handed it to his deputy, Sara Tufano, and instructed her to deliver it to the Information Room, from which, in the normal course of events, it would have been picked up by an internal messenger on one of several daily mail runs and taken to the mail room to be clocked in. Herkommer at 143-49.

Herkommer was at a loss to explain how DeVincenzo's retirement application, which he testified he received early in the morning of Monday, January 23, 1989, was not clocked into NYCERS until 11:15 a.m. on January 24. (Herkommer at 138-49.) NYCERS prides itself on avoiding this kind of discrepancy, since, as Herkommer explained:

"[T]he most important thing at the Retirement System is the clock-in date. Beneficiaries are designated on death beds. Five minutes make a difference between a benefit of a quarter of a million dollars. We live and breathe clock-in days."

Herkommer at 138-39.

Herkommer testified that, at his request, his staff checked a sampling of other documents filed at NYCERS on January 23, 1989 and found that they were all clocked in on January 23. The discrepancy in DeVincenzo's case could therefore not be attributed to a failure in the clock-in mechanism. Herkommer at 147; April Tr. at 293-94.

¹¹ April Tr. at 286, 291-92.

hence --- April 23, 1989.¹²

DeVincenzo did not, however, wait until April 23 to retire. At midday on Tuesday, February 21, 1989, Ross and Valenotti again appeared at the NYCERS office. They brought with them an Affidavit to Change Retirement Date, signed by DeVincenzo, which accelerated his retirement date from April 23 to February 22, 1989.¹³ However, DeVincenzo's aides had no intention of filing his affidavit to change the retirement date as early as noon on the 21st. Rather, they wanted Herkommer's deputies, John Murphy and Sara Tufano, to review the affidavit to make sure that it was properly filled out. Having been assured that the form was correctly filled out, Ross and Valenotti left the office without filing it.¹⁴

Later that same day, at approximately 4:45 p.m., Ross returned alone. She brought with her the affidavit that Murphy and Tufano had checked for her earlier that day and handed it to Murphy, who walked it down to the mail room to time stamp it.¹⁵

The events of February 21, 1989 had been carefully choreographed by DeVincenzo and his aides well before that day. Herkommer recalls having a series of conversations with Ross spanning a three-day period prior to February 15 to go over the calculation of the 30-day waiting period and to confirm that February 22, 1989 would be the earliest effective date on which DeVincenzo could retire.¹⁶

Discussions between DeVincenzo and NYCERS during the week of February 13 were not limited to the question of the earliest date that DeVincenzo would be eligible for retirement. There was also an extended discussion of when the last possible moment was that

¹² There is some evidence that, despite the fact that DeVincenzo initially designated a retirement date 90 days away, he intended from the outset to retire in 30 days. Herkommer recalls that prior to January 23, he had discussions with DeVincenzo about how to count the 30-day waiting period and about changing the retirement date between the 90th and the 30th day. In this regard, Herkommer recalls telling DeVincenzo that he did not need the approval of his employer to make that kind of change. Herkommer at 8.

¹³ Murphy at 68-69; April Exhibit 50. Herkommer had previously provided the Affidavit to Change Retirement Date to DeVincenzo on February 15, 1989. On that date, he and DeVincenzo had a second meeting at a diner in the vicinity of NYCERS; the purpose of the meeting, as Herkommer recalled it, was for DeVincenzo to supply the papers necessary to document his date of birth.

Herkommer recalled walking back from the diner toward his building and inviting DeVincenzo up to his office to file his birth certificate papers. DeVincenzo declined. Herkommer recalls taking the birth certificate papers up to his office and then going back down to meet DeVincenzo in the lobby to hand him the Affidavit to Change Retirement Date. April Tr. at 304-07.

¹⁴ Murphy at 69-71.

¹⁵ Id. at 75-76.

¹⁶ April Tr. at 301-04, 307-08.

DeVincenzo could file the papers necessary to change his retirement date to February 22.¹⁷ Specifically, DeVincenzo wanted to know how close to the end of the day on February 21 he could file the change.¹⁸

Herkommer discussed this issue with his staff and they advised DeVincenzo's staff to try to file the affidavit before 5 p.m. on February 21.¹⁹ DeVincenzo followed that advice punctiliously: his affidavit to change retirement date from April 23, 1989 to February 22, 1989 was clocked in at 4:59 p.m. on February 21, 1989.²⁰

2. The Missing Notice To DOI

One of the concerns DeVincenzo voiced at an early meeting with Herkommer in January 1989 was who would be notified of his retirement. Herkommer told him that DOI was the only agency to be notified. DeVincenzo pressed him, asking how long it would take for DOI to receive notice. Herkommer told him that notice to DOI typically goes out three to eight days after the retirement application is filed.²¹

It was NYCERS' normal practice in January 1989 to send to DOI, on a periodic basis, printouts of the names of all employees who filed for retirement. These printouts were generated by NYCERS and hand-delivered to DOI by the City's Central Messenger Service.²²

A log maintained by NYCERS suggests that the printout for retirement applications clocked in on January 24, 1989, the date DeVincenzo's application was clocked in, was sent to DOI on January 31, 1989, along with printouts for retirement applications received on January 25, January 26 and January 27. However, DOI is missing not only the January 24 printout and the other three printouts which, according to NYCERS' log, were sent to DOI on January 31, but is also missing a subsequent batch of printouts which NYCERS' log indicates

¹⁷ Murphy at 54-55.

¹⁸ Id. at 72-75; April Tr. at 309-10.

¹⁹ Murphy at 72-75.

²⁰ April Exhibit 50.

²¹ April Tr. at 282, 285-86.

²² Id. at 294-95.

were sent on February 6, 1989.²³ As of February, no particular person at DOI was responsible for making sure that a printout was received from NYCERS for each working day.²⁴

3. Belated Notice To The Mayor's Office

In January 1989, NYCERS changed its practice of notice to and approval by the employing agency of an employee's expression of intent to change retirement dates. Prior to January 1989, it was NYCERS' normal practice to notify the employing agency and to seek the employing agency's approval in the event that an employee wanted --- as DeVincenzo did --- to change his retirement date.

This practice --- which was in effect for as long as anyone at NYCERS can remember --- was changed in late December 1988 or early January 1989. Without consulting his Board of Trustees, Herkommer abolished the requirement that the employing agency approve an employee's proposed change of retirement date.²⁵ Had DeVincenzo, for instance, filed his retirement papers in November 1988 and sought to advance his retirement date in December, a letter would have been sent to the Mayor advising him of the change of retirement date and requesting the Mayor's approval. Because that practice was abolished just weeks before DeVincenzo filed for retirement, the only notice sent to the Mayor's Office was sent after his retirement was a fait accompli.²⁶

Thus, on February 17, 1989, when Deputy Mayor Brezenoff and Chief of Staff Diane Coffey met with DeVincenzo to tell him that the Mayor had concluded that he should resign, DeVincenzo surprised them by telling them that he had already put in his retirement papers, effective in 90 days.²⁷

²³ DOI also determined that it is missing printouts for over 80 working days in the preceding year.

²⁴ In the wake of DeVincenzo's retirement, DOI and NYCERS have modified their procedures for transmitting and receiving the printouts. NYCERS now sends the printouts to DOI by fax machine instead of by messenger; if, for some reason, on a given day no printout is sent, NYCERS faxes a message to DOI to advise them that no printout is being sent that day. (Herkommer at 203-04.) A DOI employee is responsible for calling NYCERS if nothing is received.

²⁵ April Tr. at 312-18. Herkommer testified that he changed the policy on agency approval for applications to change a retirement date so as to effect consistency with a different rule change, approved by NYCERS' Board of Trustees on December 21, 1988, eliminating the requirement that the employing agency be notified and its approval sought when an employee seeks to withdraw his retirement application. Id. at 317-18; Herkommer at 8-18, 55-69.

²⁶ April Tr. at 282-83, 315, and April Exhibit 51.

²⁷ This was not the first time that DeVincenzo had spoken to Brezenoff about the possibility of retiring. Either immediately before or immediately after DeVincenzo testified at the Commission's public hearings on January 11, 1989, he asked Brezenoff whether the Mayor wanted him to resign. Brezenoff responded that the Mayor had not indicated any such desire. During that conversation, DeVincenzo gave Brezenoff to understand that while he had no immediate plans to retire, if he were to do so "it
(continued...)

Stunned, Brezenoff pressed DeVincenzo to tell him when he had done so. According to Brezenoff, DeVincenzo could not remember the date. At first, he told Brezenoff he had put in his retirement papers "a week or so ago." When Brezenoff pressed him further, DeVincenzo had to look through his papers to find the date.²⁸ Brezenoff told DeVincenzo that the Mayor wanted him to leave by the end of March;²⁹ DeVincenzo said that he would have to think it over.³⁰

The facts outlined above strongly suggest that by February 17, when Brezenoff asked for DeVincenzo's resignation, DeVincenzo had already effectively mapped out his strategy for retiring without the loss of his pension. By February 17, he had already secured from NYCERS not only the papers necessary to advance his retirement date, but had worked out in detail the precise date and time he would make that change. Although he sought Brezenoff's assurances on February 17 that the Mayor had no immediate plans to fire him,³¹ DeVincenzo took no chances. To Brezenoff's surprise, DeVincenzo informed him on February 23 that he had taken himself off the payroll the previous day.³²

C. Conclusion And Recommendation

In April 1988, the Commission recommended that state law be changed to permit the forfeiture of pension rights of public employees convicted of a felony related to their employment. If such forfeiture was permitted, it would occur upon conviction. The timing of the filing of the employee's retirement papers would not be relevant to the forfeiture determination.

In the absence of such a change in the law, the current New York City system renders critical the timing of the retirement notice and the employee's choice of an effective retirement date. In theory, the current system is designed to allow the City to determine, prior

²⁷ (...continued)
would be three, four months into the future." April Tr. at 504-05.

²⁸ April Tr. at 511-12.

²⁹ Id. at 510-13, 582.

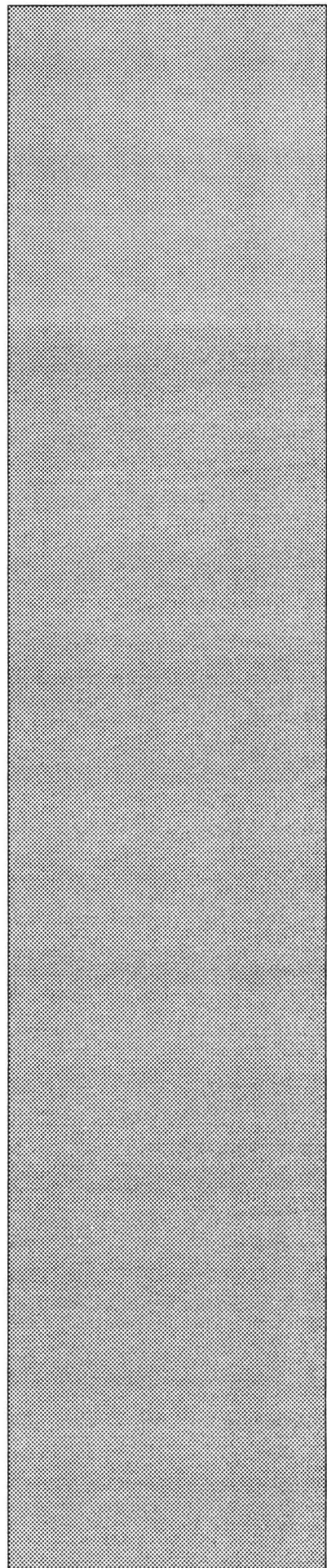
³⁰ Id. at 582.

³¹ Id. at 513.

³² Id. at 516-17.

to the employee's retirement date, whether wrongdoing has occurred sufficient to discharge or demote an employee, and thereby affect his pension. In practice, as DeVincenzo's maneuvers demonstrate, that system is seriously flawed. In the absence of the recommended changes in the state law, the Commission concludes that it is imperative that the City system be changed to condition a public employee's pension on the employee providing written notice of intent to retire at least ninety days in advance of the proposed retirement date to the employee's agency head and to DOI. In addition, the City should provide that the designated retirement date may not be accelerated without the written approval of the employee's agency head.

Attachment A

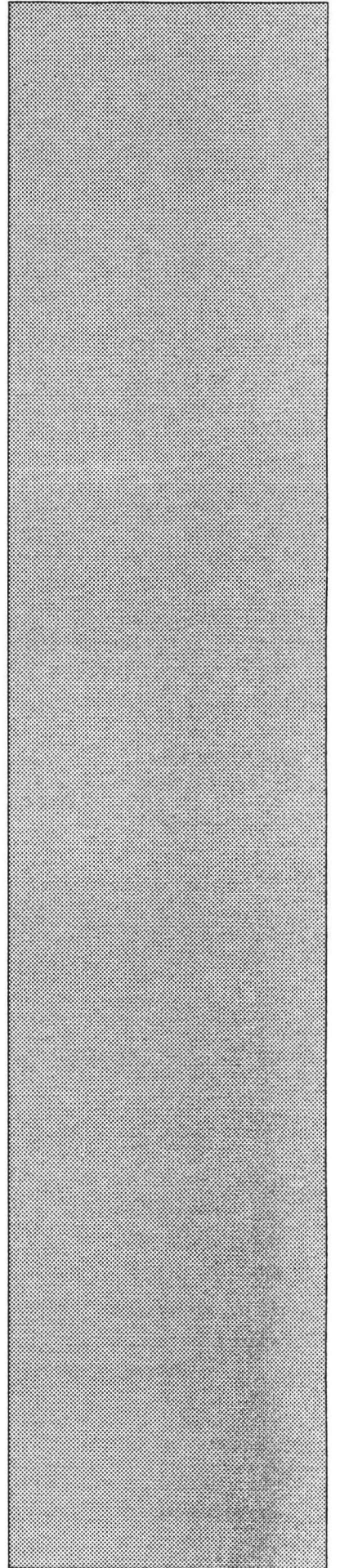


ATTACHMENT A

GLOSSARY OF ABBREVIATIONS

DEP	New York City Department Of Environmental Protection
DOI	New York City Department Of Investigation
DOP	New York City Department Of Personnel
DOT	New York City Department Of Transportation
FISA	New York City Financial Information Services Agency
MPD	Managerial Position Description
NYCERS	New York City Employees' Retirement System
OMB	New York City Office Of Management and Budget
OMLR	New York City Office Of Municipal Labor Relations
PAR	Planned Action Report

Attachment B



ATTACHMENT B

LIST OF PUBLIC HEARING WITNESSES

JANUARY 9, 1989

Dr. David H. Rosenbloom

Dr. William Michael Johnston

Nydia Padilla-Barham

Annette Luyanda-Medina

Sherri Roth

Roger Martin

JANUARY 11, 1989

Fred Carfora

James G. Hein

Joseph DeVincenzo

APRIL 4, 1989

Robert Jean

Joseph DeMarco

Joy Schwartz

Jerry Skurnick

Peter Gilvarry

Harold Herkommer

APRIL 5, 1989

Gerald Levy

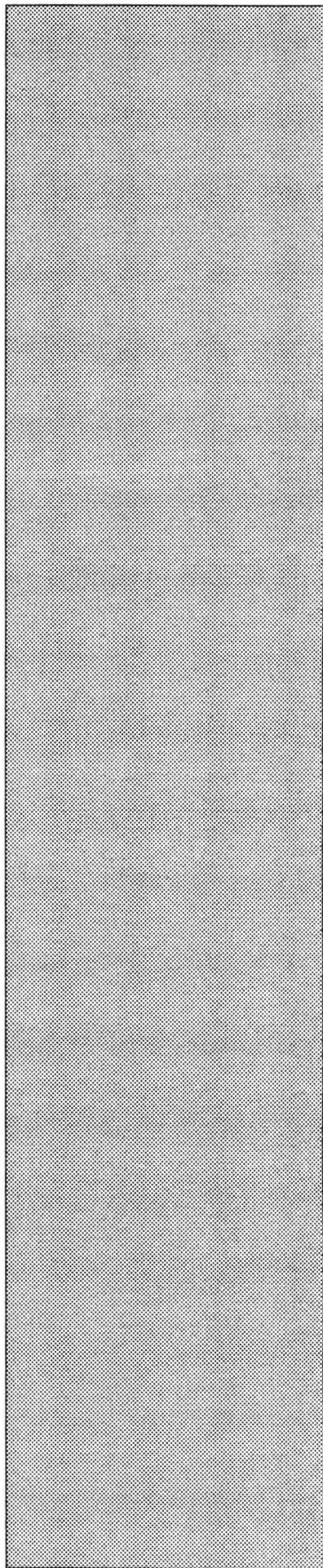
Helen Mosley

John LoCicero

Stanley Brezenoff

Mayor Edward I. Koch

Attachment C



ATTACHMENT C

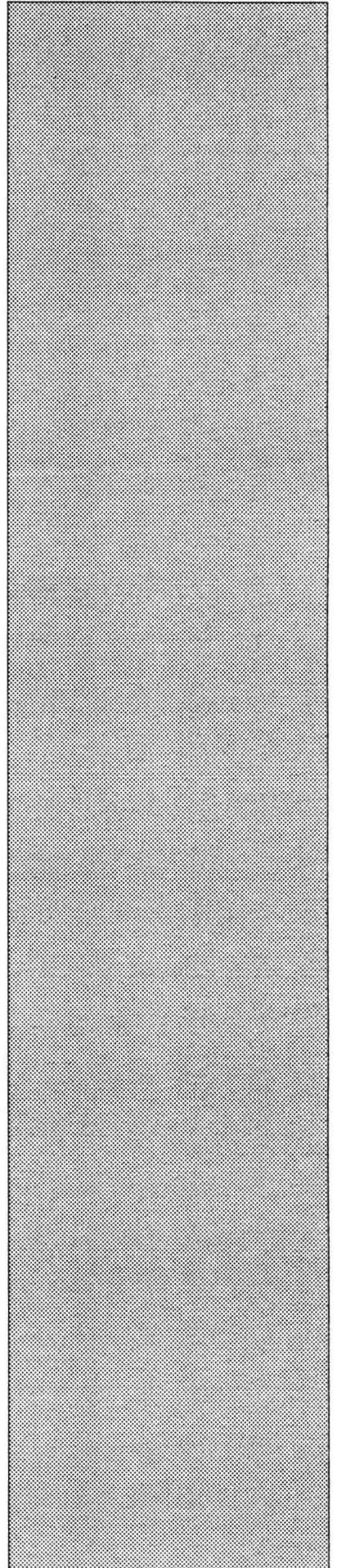
LIST OF EXPERTS CONSULTED

Dr. David H. Rosenbloom - Maxwell School of Citizenship
and Public Affairs, Syracuse University

Dr. William Michael Johnston - Political Science Department,
Colgate University

Dr. Annemarie Walsh - Institute of Public Administration

Attachment D



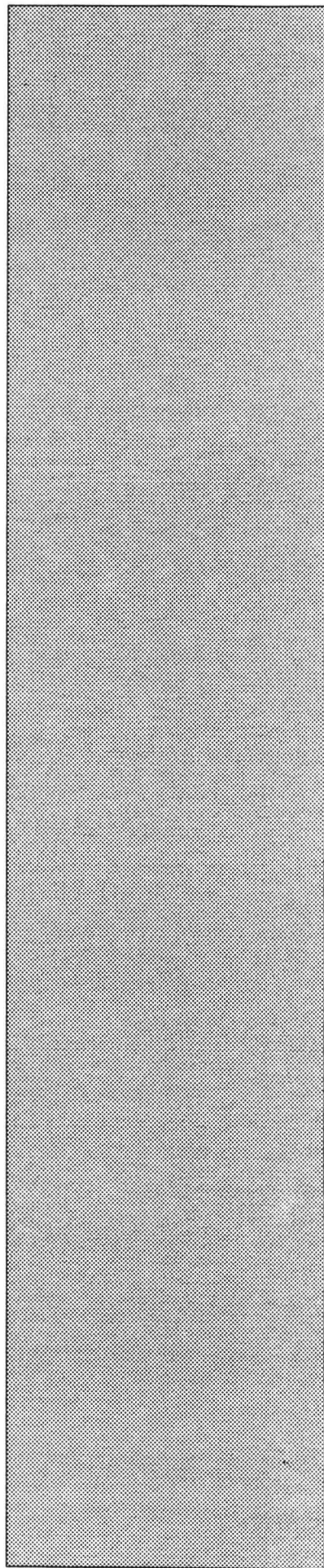
BREAKDOWN OF CITY WORKFORCE
MAYORAL AGENCIES

YEAR	PERMANENT EMPLOYEESDISCRETIONARY.....				TOTAL DISCRETIONARY EMPLOYEES	TOTAL
		NON-PERMANENT PROV.	PROV. PROM.	NON-COMPETITIVE	EXEMPT		
1978	90,486 (89.4%)	3,329 (3.3%)	4,605 (4.6%)	2,485 (2.5%)	288 (.2%)	10,707 (10.6%)	101,193 (100%)
1979	94,505 (89.2%)	6,583 (6.2%)	1,594 (1.5%)	2,961 (2.8%)	282 (.3%)	11,420 (10.8%)	105,925 (100%)
1980	90,532 (86.4%)	9,304 (8.9%)	1,498 (1.4%)	3,153 (3.0%)	290 (.3%)	14,245 (13.6%)	104,777 (100%)
1981	NA *	NA	NA	NA	NA	NA	
1982	89,975 (77.9%)	18,523 (16.0%)	2,869 (2.5%)	3,830 (3.3%)	295 (.3%)	25,517 (22.1%)	115,492 (100%)
1983	93,425 (78.6%)	17,915 (15.1%)	2,627 (2.2%)	4,657 (3.9%)	311 (.2%)	25,510 (21.4%)	118,935 (100%)
1984	96,091 (77.8%)	19,527 (15.8%)	2,162 (1.7%)	5,257 (4.3%)	529 (.4%)	27,475 (22.2%)	123,566 (100%)
1985	98,117 (75.6%)	23,559 (18.1%)	1,780 (1.4%)	5,787 (4.5%)	519 (.4%)	31,645 (24.4%)	129,762 (100%)
1986	102,134 (74.4%)	23,505 (17.1%)	1,472 (1.1%)	9,641 (7.0%)	505 (.4%)	35,123 (25.6%)	137,257 (100%)
1987	105,289 (74.8%)	25,432 (18.1%)	1,322 (.9%)	8,212 (5.8%)	543 (.4%)	35,509 (25.2%)	140,798 (100%)
1988	103,551 (69.8%)	30,240 (20.4%)	2,042 (1.3%)	11,836 (8.0%)	751 (.5%)	44,869 (30.2%)	148,420 (100%)

* Not Available

Source - Department of Personnel Annual Reports

Attachment E



RESUME COVER SHEET

Name ROBERT M BOYD Referral Source Bob ESWARD Date Rec'd 12/4/8
 Ethnicity _____ Sex M Phone (H) 901-
(O) 901-

1. Titles Areas of Expertise

- Admin. Staff Analyst
- Admin. Manager
- Senior Project Coordinator

2. Minimum Salary \$60-80,000

3. Special Skills (foreign language, typing, word processing, etc.)

12/4
Yes, I am sure we can help -
[Signature]

3a. Driver's License? _____

4. Post Graduate Degrees _____ (specify)

5. Acceptable Work Locations Not Staten Island

6. Full-time yes or no Would part-time be considered? yes or no

Part-time yes or no Would full-time be considered? yes or no

7. Shift Work? _____ 8. Weekends? _____ 9. Add'l Phone No. _____

<u>DATE</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>DISPOSITION</u>

OFFICE OF THE MAYOR

RESUME COVER SHEET

Name BARBARA Esposito Referral Source LaPete, J. Date Rec'd 7/20/88

Ethnicity W Sex F Phone _____

1. Titles

Areas of Expertise

- Office Aide
- Community Assistant
- Community Service Aide
- Technical Support Aide

(clerical-nt-11; community affairs -15; computer aide-16)

Call me see me 7/20/88

2. Minimum Salary 13,000

3. Special Skills (foreign language, typing, word processing, etc.)

3a. Driver's License? Yes

4. Post Graduate Degrees _____ (specify) S.I.

5. Acceptable Work Locations Manhattan

yes yes
 or or
 no no
 6. Full-time Would part-time be considered?
 yes yes
 or or
 no no
 Part-time Would full-time be considered?

7. Shift Work? Yes 8. Weekends? Yes 9. Add'l Phone No. None

<u>DATE</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>DISPOSITION</u>

OFFICE OF THE MAYOR

RESUME COVER SHEET

Name JAMES SNYDER Referral Source Muller Date Rec'd 11/29
Ethnicity _____ Sex M Phone _____

1. Titles Areas of Expertise
 Office Associate (clerical-NT-11; comm. affairs-15)
 Shop Clerk
 Police Adm. Aide *jm*
 Stock Handler

2. ^{Comm. Associate} Minimum Salary 16,000

3. Special Skills (foreign language, typing, word processing, etc.)

3a. Driver's License? yes

4. Post Graduate Degrees _____ (specify)

5. Acceptable Work Locations Bronx + Manhattan

6. Full-time ^{yes} _{or} ^{no Would part-time be considered? ^{yes} _{or} ^{no}}

Part-time ^{yes} _{or} ^{no Would full-time be considered? ^{yes} _{or} ^{no}}

7. Shift Work? yes 8. Weekends? yes 9. Add'l Phone No. _____

<u>DATE</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>DISPOSITION</u>

RESUME COVER SHEET

Name Kimberly Miller Referral Source S. Davidoff Date Rec'd 1/1
Ethnicity E Sex F Phone (212) -

1. Titles Areas of Expertise
Nurse's Aide (health-15; clerical-07; community affai
Community Assistant
Office Aide

over
high 3/23
3rd place
in

2. Minimum Salary 6,-11,000

3. Special Skills (foreign language, typing, word processing, etc.)
Typing 35wpm

3a. Driver's License? NO

DEP

4. Post Graduate Degrees _____ (specify)

5. Acceptable Work Locations ALL BOROUGHS

yes or no
6. Full-time Would part-time be considered?

yes or no
Part-time Would full-time be considered?

7. Shift Work? NO 8. Weekends? YES 9. Add'l Phone No. _____

<u>DATE</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>DISPOSITION</u>
<u>3/12</u>	<u>CSU</u>	<u>Office Aide</u>	
<u>3/17</u>	<u>DGS</u>	<u>Comm. Ass</u>	
<u>3/19</u>	<u>DGS</u>	<u>Comm. Service Aide</u>	

OFFICE OF THE MAYOR

RESUME COVER SHEET

Name WILLIAM LANGELLA Referral Source CMORTE Date Rec'd 1/16/8

Ethnicity W Sex M Phone _____

1. Titles

Areas of Expertise

Deck hand

Comments -

OK'd by Joe 1/17/85

2. Minimum Salary _____

3. Special Skills (foreign language, typing, word processing, etc.)

3a. Driver's License? _____

4. Post Graduate Degrees _____ (specify)

5. Acceptable Work Locations _____

6. Full-time Would part-time be considered?
yes or no

Part-time Would full-time be considered?
yes or no

7. Shift Work? _____ 8. Weekends? _____ 9. Add'l Phone No. _____

<u>DATE</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>DISPOSITION</u>

ATTACHMENT

OFFICE OF THE MAYOR

RESUME COVER SHEET

Name George Armet Referral Source Lo Cicero Date Rec'd 1/1
 Ethnicity _____ Sex M Phone _____

1. Titles

Areas of Expertise

Principal Admin. Associate

(admin.-03; statistics-32)

jer

2. Minimum Salary \$ - 21,000

3. Special Skills (foreign language, typing, word processing, etc.)
Very light typing

3a. Driver's License? NO

4. Post Graduate Degrees _____ (specify)

5. Acceptable Work Locations ALL AROUNDS IF EASY TO REACH

yes or no
 6. Full-time Would part-time be considered?

yes or no
 Part-time Would full-time be considered?

7. Shift Work? NO 8. Weekends? YES 9. Addt'l Phone No. _____

<u>DATE</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>DISPOSITION</u>

OFFICE OF THE MAYOR

RESUME COVER SHEET

Name Eleanor Rosebloom Referral Source no letter Date Rec'd 1/6
Ethnicity W Sex F Phone (212)

1. Titles Principal Admin. Associate Areas of Expertise (administrative-03)

DEP

2. Minimum Salary 720,000

3. Special Skills (foreign language, typing, word processing, etc.)

3a. Driver's License? YES

4. Post Graduate Degrees _____ (specify)

5. Acceptable Work Locations NO SI., BRONX + QUEENS 6. Shift Work? YES

7. Full-time YES Would part-time be considered?

Part-time Would full-time be considered?

8. Overtime? _____ 9. Weekends? YES 10. Addt'l Phone No. _____

<u>DATE</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>DISPOSITION</u>

ATTACHMENT

OFFICE OF THE MAYOR

RESUME COVER SHEET

Name Paul Duckett Referral Source Lo Cicero Date Rec'd 3/
Ethnicity _____ Sex M Phone _____

1. Titles

Areas of Expertise

Principal Admin. Associate

(administrative-03; contracts-11;
analyst-04)

Assistant Project Coord.

Staff Analyst

2. Minimum Salary 18,000

3. Special Skills (foreign language, typing, word processing, etc.)

3a. Driver's License? YES

4. Post Graduate Degrees _____ (specify)

5. Acceptable Work Locations ANY WHERE

6. Full-time Would part-time be considered?

Part-time Would full-time be considered?

7. Shift Work? YES 8. Weekends? NO 9. Addt'l Phone No. _____

<u>DATE</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>DISPOSITION</u>

OFFICE OF THE MAYOR

RESUME COVER SHEET

41



Name FRANK PUIO Referral Source JOE D. Date Rec'd 6/11/84

Ethnicity H Sex M Phone _____

1. Titles Areas of Expertise

Dir HRS
Adm. Director of Social Service
Adm. Comm. Relations Specialist
Adm. Staff Analyst
Adm. Manager

Agency referral

HRA
JUVENILE JUV
CORR

2. Minimum Salary 48,150

3. Special Skills (foreign language, typing, word processing, etc.)

3a. Driver's License? _____

4. Post Graduate Degrees _____ (specify)

5. Acceptable Work Locations _____

yes or no yes or no

6. Full-time Would part-time be considered?

yes or no yes or no

Part-time Would full-time be considered?

7. Shift Work? _____ 8. Weekends? _____ 9. Add'l Phone No. _____

DATE	AGENCY	TITLE	DISPOSITION
6/2/84	DEP	3rd - anything	but ECB preferred CR Joe

OFFICE OF THE MAYOR

RESUME COVER SHEET

Name BARBARA WEAVER Referral Source LAPORTE, SR. Date Rec'd 3/16/8

Ethnicity W Sex F Phone _____

1. Titles

Areas of Expertise

Nurse's Aide

(health-15; clerical-07)

Office Associate

Shop Clerk

Handwritten circled mark

2. Minimum Salary 12,000.

3. Special Skills (foreign language, typing, word processing, etc.)
types 25 words

3a. Driver's License? yes

4. Post Graduate Degrees _____ (specify)

5. Acceptable Work Locations all boroughs (preferably J.L.)

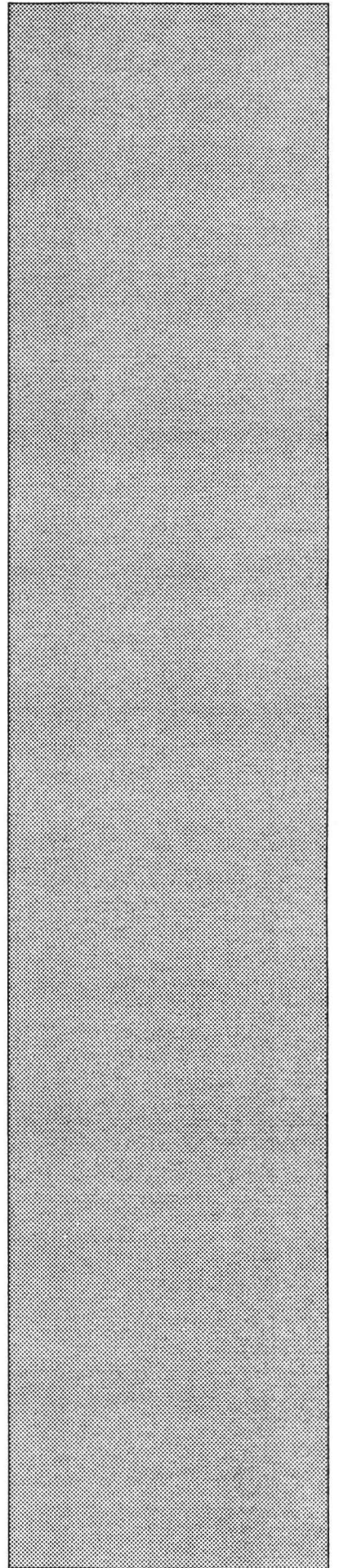
6. Full-time yes or no Would part-time be considered? yes or no

Part-time yes or no Would full-time be considered? yes or no

7. Shift Work? yes 8. Weekends? yes 9. Addt'l Phone No. NO

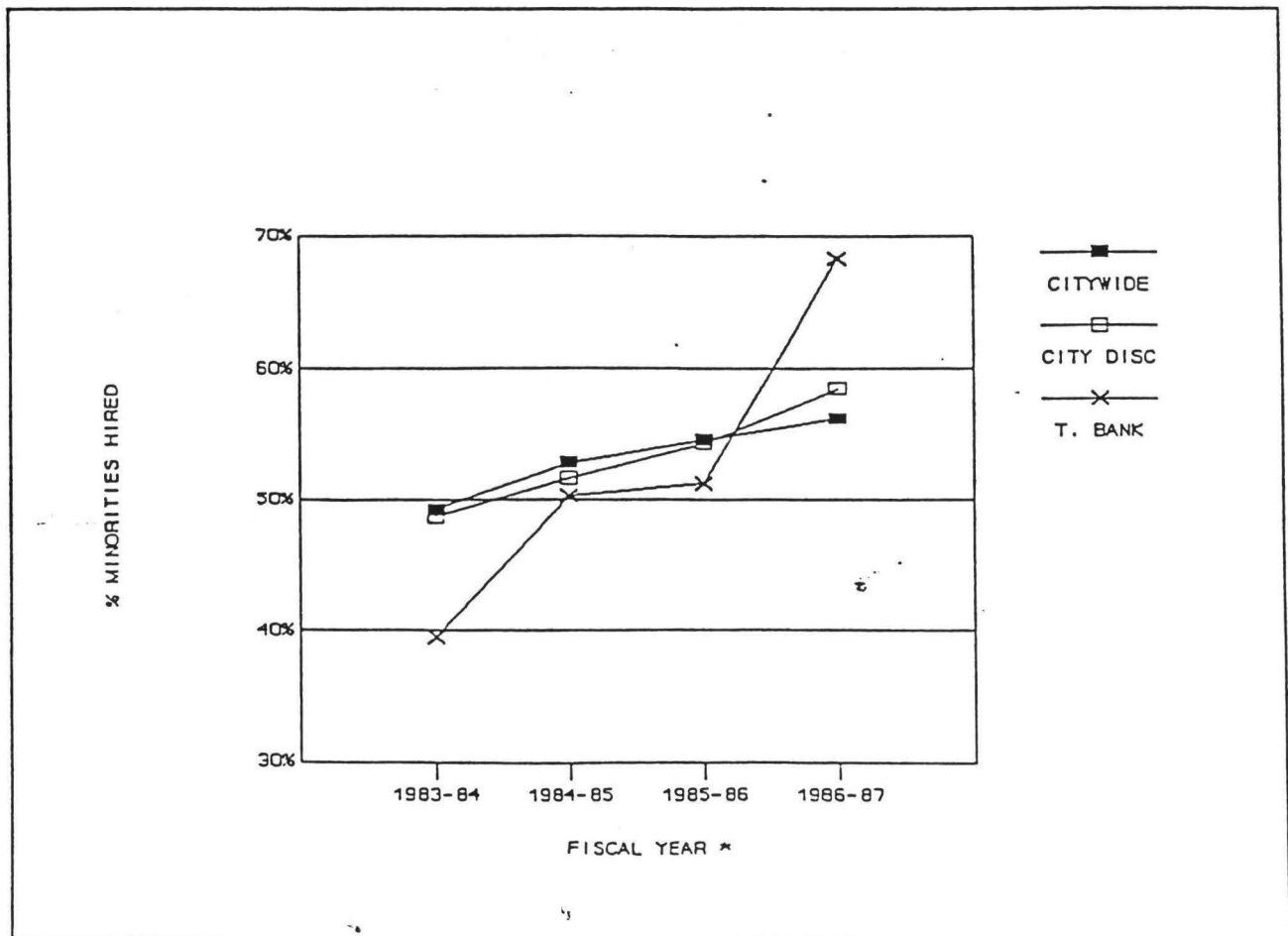
<u>DATE</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>DISPOSITION</u>

Attachment F



MINORITY HIRES CITYWIDE · CITYWIDE DISCRETIONARY · TALENT BANK

<u>Fiscal Year*</u>	<u>Citywide</u>		<u>Citywide Discretionary</u>		<u>Talent Bank</u>	
1983-84	5,796	49.28%	2,633	48.72%	145	39.51%
1984-85	8,362	52.84%	5,026	51.64%	238	50.32%
1985-86	8,117	54.60%	5,090	54.32%	208	51.23%
1986-87	6,850	56.24%	** 4,532	58.52%	334	68.30%
Total	29,125	53.31%	17,281	53.58%	925	53.31%

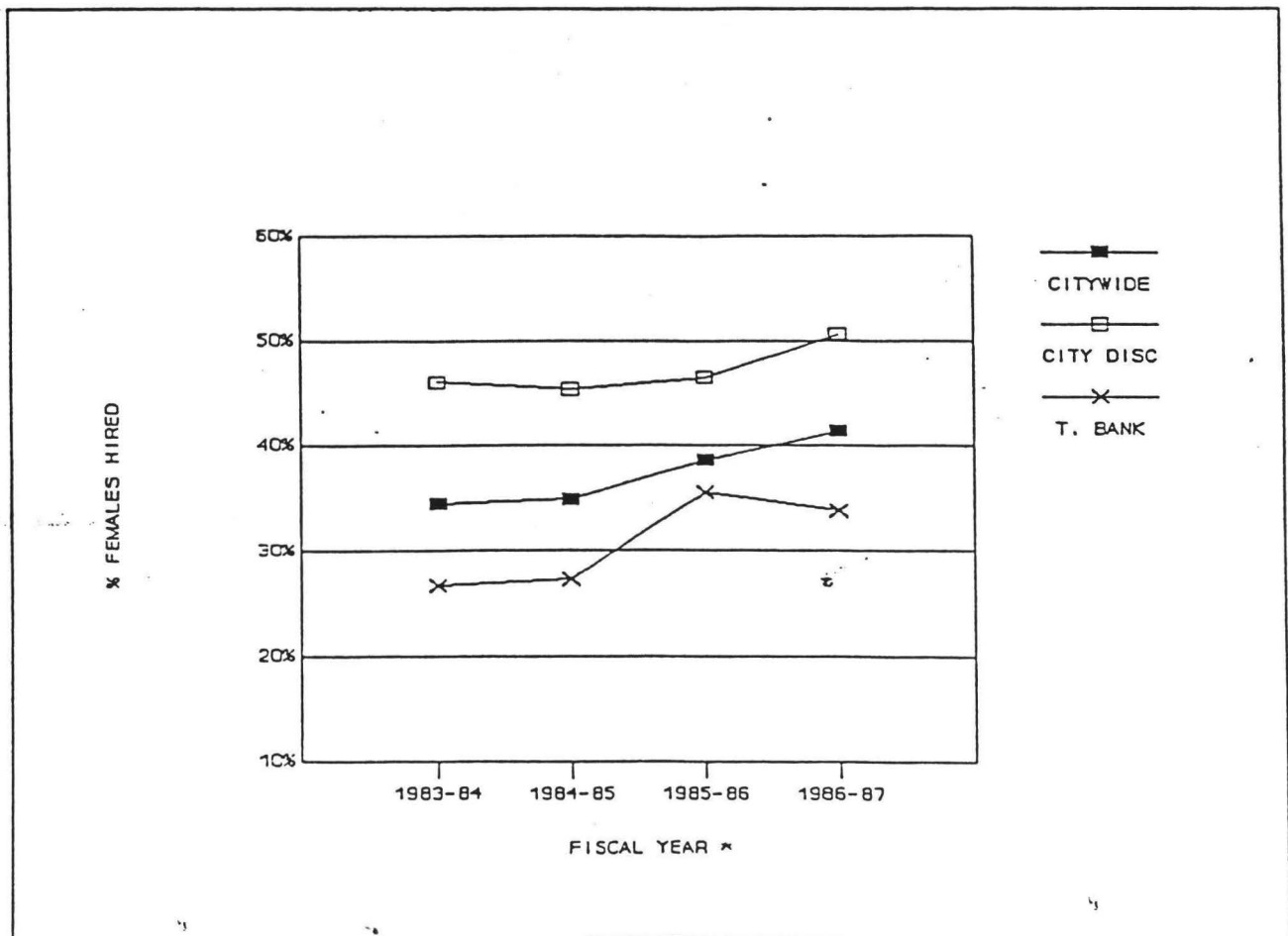


* CITYWIDE, TALENT BANK - FISCAL YEAR ENDING DATE, JUNE 30.
CITYWIDE DISCRETIONARY - FISCAL YEAR ENDING DATE, APRIL 30.

** CITYWIDE DISCRETIONARY FIGURES: MAY 1986 - FEBRUARY 1987.

FEMALE HIRES CITYWIDE · CITYWIDE DISCRETIONARY · TALENT BANK

<u>Fiscal Year*</u>	<u>Citywide</u>		<u>Citywide Discretionary</u>		<u>Talent Bank</u>	
1983-84	4,046	34.40%	2,488	46.04%	98	26.70%
1984-85	5,518	34.87%	4,412	45.33%	129	27.27%
1985-86	5,730	38.54%	4,357	46.50%	144	35.47%
1986-87	5,035	41.34%	** 3,923	50.65%	165	33.74%
<hr/> Total 1983-87	<hr/> 20,329	<hr/> 37.21%	<hr/> 15,180	<hr/> 47.07%	<hr/> 536	<hr/> 30.89%



* CITYWIDE, TALENT BANK - FISCAL YEAR ENDING DATE, JUNE 30.
CITYWIDE DISCRETIONARY - FISCAL YEAR ENDING DATE, APRIL 30.

** CITYWIDE DISCRETIONARY FIGURES: MAY 1986 - FEBRUARY 1987.

H I R I N G P A T T E R N S F I S C A L Y E A R S * 1 9 8 3 - 1 9 8 7

GENDER & ETHNIC CLASSIFICATION	CITYWIDE				CITYWIDE DISCRETIONARY				TALENT BANK			
	1983-84	1984-85	1985-86	1986-87	1983-84	1984-85	1985-86	1986-87**	1983-84	1984-85	1985-86	1986-87
FEMALE-WHITE	1,221 10.38%	1,508 9.53%	1,574 10.59%	1,285 10.55%	1,013 18.75%	1,692 17.38%	1,505 16.06%	1,292 16.68%	38 10.35%	45 9.51%	51 12.56%	46 9.41%
FEMALE-BLACK	2,225 18.92%	3,076 19.44%	3,306 22.24%	2,893 23.75%	1,157 21.41%	2,083 21.40%	2,244 23.95%	2,010 25.95%	44 11.99%	50 10.57%	54 13.30%	86 17.59%
FEMALE-HISPANIC	516 4.39%	806 5.09%	723 4.86%	749 6.15%	265 4.90%	530 5.45%	510 5.44%	532 6.87%	13 3.54%	33 6.98%	33 8.13%	29 5.93%
FEMALE-ASIAN	78 0.66%	116 0.73%	120 0.81%	100 0.82%	53 0.98%	107 1.10%	98 1.05%	87 1.12%	1 0.27%	1 0.21%	6 1.48%	3 0.61%
FEMALE-AM. IND.	6 0.05%	12 0.08%	7 0.05%	8 0.07%	0 0.00%	0 0.00%	0 0.00%	2 0.03%	2 0.54%	0 0.00%	0 0.00%	1 0.20%
TOTAL FEMALE	4,046 34.40%	5,518 34.87%	5,730 38.54%	5,035 41.34%	2,488 46.04%	4,412 45.33%	4,357 46.50%	3,923 50.65%	98 26.70%	129 27.27%	144 35.47%	165 33.74%

* CITYWIDE, TALENT BANK - FISCAL YEAR ENDING DATE, JUNE 30.
CITYWIDE DISCRETIONARY - FISCAL YEAR ENDING DATE, APRIL 30.

** NINE MONTH PERIOD, MAY - FEBRUARY.

HIRING PATTERNS FISCAL YEARS* 1983 - 1987

GENDER & ETHNIC CLASSIFICATION	CITYWIDE				CITYWIDE DISCRETIONARY				TALENT BANK			
	1983-84	1984-85	1985-86	1986-87	1983-84	1984-85	1985-86	1986-87**	1983-84	1984-85	1985-86	1986-87
MALE-WHITE	4,744 40.34%	5,954 37.63%	5,176 34.82%	4,045 33.21%	1,758 32.53%	3,015 30.98%	2,775 29.62%	1,921 24.80%	184 50.14%	190 40.17%	147 36.21%	109 22.29%
MALE-BLACK	1,911 16.25%	2,758 17.43%	2,532 17.03%	1,904 15.63%	759 14.05%	1,528 15.70%	1,495 15.96%	1,246 16.09%	48 13.08%	89 18.82%	72 17.73%	130 26.58%
MALE-HISPANIC	836 7.11%	1,325 8.37%	1,120 7.53%	956 7.85%	314 5.81%	591 6.07%	513 5.47%	478 6.17%	32 8.72%	59 12.47%	39 9.61%	70 14.31%
MALE-ASIAN	211 1.79%	262 1.66%	300 2.02%	234 1.92%	85 1.57%	187 1.92%	230 2.45%	175 2.26%	5 1.36%	4 0.85%	4 0.99%	12 2.45%
MALE-AM. IND.	13 0.11%	7 0.04%	9 0.06%	6 0.05%	0 0.00%	0 0.00%	0 0.00%	2 0.03%	0 0.00%	2 0.42%	0 0.00%	3 0.61%

TOTAL MALE	7,715 65.60%	10,306 65.13%	9,137 61.46%	7,145 58.66%	2,916 53.96%	5,321 54.67%	5,013 53.50%	3,822 49.35%	269 73.30%	344 72.73%	262 64.53%	324 66.26%

* CITYWIDE, TALENT BANK - FISCAL YEAR ENDING DATE, JUNE 30.
CITYWIDE DISCRETIONARY - FISCAL YEAR ENDING DATE, APRIL 30.

** NINE MONTH PERIOD, MAY - FEBRUARY.

H I R I N G P A T T E R N S F I S C A L Y E A R S * 1 9 8 3 - 1 9 8 7

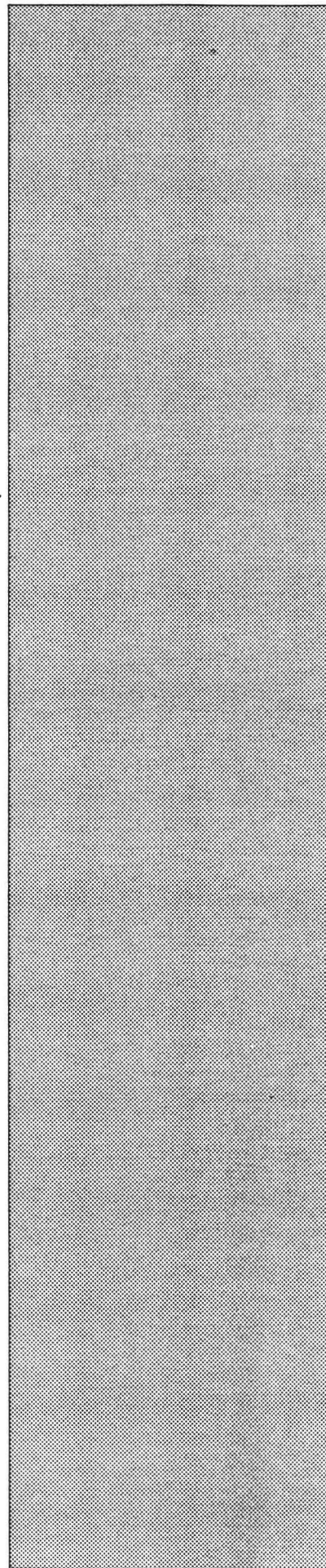
GENDER & ETHNIC CLASSIFICATION	CITYWIDE				CITYWIDE DISCRETIONARY				TALENT BANK			
	1983-84	1984-85	1985-86	1986-87	1983-84	1984-85	1985-86	1986-87**	1983-84	1984-85	1985-86	1986-87
TOTAL MALE	7,715 65.60%	10,306 65.13%	9,137 61.46%	7,145 58.66%	2,916 53.96%	5,321 54.67%	5,013 53.50%	3,822 49.35%	269 73.30%	344 72.73%	262 64.53%	324 66.26%
TOTAL FEMALE	4,046 34.40%	5,518 34.87%	5,730 38.54%	5,035 41.34%	2,488 46.04%	4,412 45.33%	4,357 46.50%	3,923 50.65%	98 26.70%	129 27.27%	144 35.47%	165 33.74%
TOTAL MINORITY	5,796 49.28%	8,362 52.84%	8,117 54.60%	6,850 56.24%	2,633 48.72%	5,026 51.64%	5,090 54.32%	4,532 58.52%	145 39.51%	238 50.32%	208 51.23%	334 68.30%
TOTAL HIRES	11,761 100.00%	15,824 100.00%	14,867 100.00%	12,180 100.00%	5,404 100.00%	9,733 100.00%	9,370 100.00%	7,745 100.00%	367 100.00%	473 100.00%	406 100.00%	489 100.00%

	CITYWIDE	CITYWIDE DISCRETIONARY	TALENT BANK
TOTAL MALE 1983 - 1987	34,303 62.79%	17,072 52.93%	1,199 69.11%
TOTAL FEMALE 1983 - 1987	20,329 37.21%	15,180 47.07%	536 30.89%
TOTAL MINORITY 1983 - 1987	29,125 53.31%	17,281 53.58%	925 53.31%
TOTAL HIRES 1983 - 1987	54,632 100.00%	32,252 100.00%	1,735 100.00%

* CITYWIDE, TALENT BANK - FISCAL YEAR ENDING DATE, JUNE 30.
CITYWIDE DISCRETIONARY - FISCAL YEAR ENDING DATE, APRIL 30.

** NINE MONTH PERIOD, MAY - FEBRUARY.

Attachment G



DEPARTMENT OF ENVIRONMENTAL PROTECTION LABORERS

Calendar Year
1984

Sex and Ethnicity Breakdown

Total DEP Laborer Hires = 78

Source - DEP
Personnel Records

DEP Laborer Hires from Talent Bank = 70

Source - Talent
Bank Records

White Males	48	68.57%	71.43%
White Females	2	2.86%	
Black Males	8	11.43%	28.57%
Black Females	4	5.71%	
Hispanic Males	8	11.43%	
	<hr/> 70	<hr/> 100%	

Demographic Breakdown

Source - DEP
Personnel Records

Manhattan	4	5.13%
Bronx	20	25.64%
Brooklyn	14	17.95%
Staten Island	24	30.77%
Queens	14	17.95%
Westchester	1	1.28%
Long Island	1	1.28%
	<hr/> 78	<hr/> 100%

DEPARTMENT OF ENVIRONMENTAL PROTECTION LABORERS

Calendar Year
1985

Sex and Ethnicity Breakdown

Total DEP Laborer Hires = 119

Source - DEP
Personnel Records

DEP Laborer Hires from Talent Bank = 103

Source - Talent Bank
Records

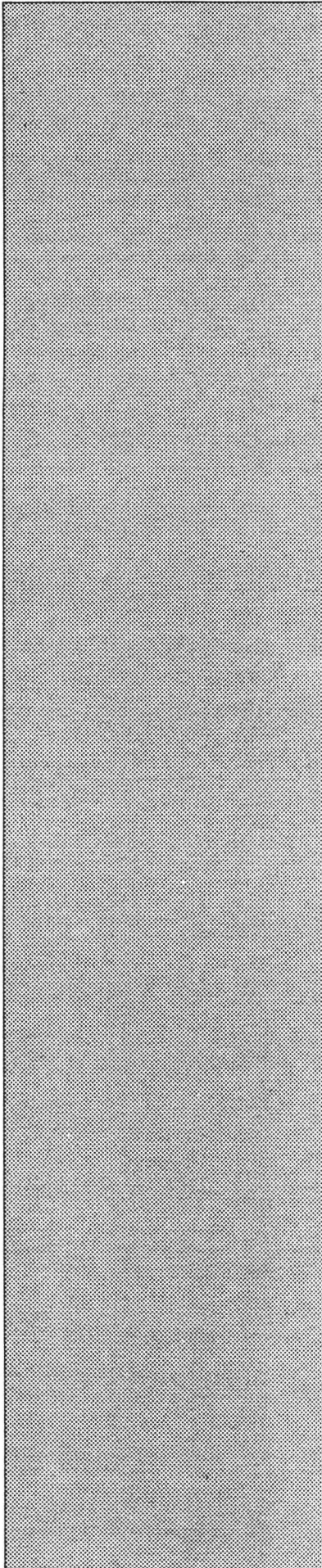
White Males	67	65.05%	} 66.02%
White Females	1	.97%	
Black Males	10	9.71%	} 33.98%
Black Females	3	2.91%	
Hispanic Males	20	19.42%	
Hispanic Females	1	.97%	
Indian Males	1	.97%	
	<u>103</u>	<u>100%</u>	

Demographic Breakdown

Source - DEP
Personnel Records

Manhattan	7	5.88%
Bronx	23	23.53%
Brooklyn	30	25.21%
Staten Island	26	21.85%
Queens	25	21.01%
Westchester	2	1.68%
Unknown	1	.84%
	<u>119</u>	<u>100%</u>

Attachment H



DEPARTMENT OF TRANSPORTATION

Total Hires (1984 and 1985) for
Assistant Highway Repairer, Debris
Remover, Deckhand and Ferry Agent

Source:
DOT EEO Reports
and Personnel
Records

White Males	139	67.5%
White Females	1	.5%
Black Males	47	22.8%
Black Females	2	1.0%
Hispanic Males	16	7.7%
Hispanic Females	1	.5%
	<hr/> 206	<hr/> 100%

Total Hires (1984 and 1985) for
Assistant Highway Repairer, Deckhand
and Ferry Agent

Source:
DOT EEO Reports
and Personnel
Records

White Males	114	85.1%
White Females	1	.7%
Black Males	10	7.5%
Black Females	1	.7%
Hispanic Males	8	6.0%
	<hr/> 134	<hr/> 100%

DEPARTMENT OF TRANSPORTATION
Deckhand

Calendar Year
1984

Sex and Ethnicity Breakdown

DOT Deckhand Hires from Talent Bank = 7

Source: Talent
Bank Records

White Males	7	100%
-------------	---	------

Total DOT Deckhand Hires = 11

Source: DOT
EEO Reports and
Personnel Records

White Males	11	100%
-------------	----	------

Demographic Breakdown

Source: DOT
Personnel Records

Manhattan	1	9.1%
Brooklyn	4	36.4%
Staten Island	5	45.4%
Queens	1	9.1%
	<hr/> 11	<hr/> 100%

DEPARTMENT OF TRANSPORTATION
Deckhand

Calendar Year
1985

Sex and Ethnicity Breakdown

DOT Deckhand Hires from Talent Bank = 26

Source: Talent
Bank records

White Males	23	88.5%
Black Males	2	7.7%
Hispanic Males	1	3.8%
	<hr/>	<hr/>
	26	100%

Total DOT Deckhand Hires = 27

Source: DOT
EEO Reports and
Personnel Records

White Males	24	88.9%
Black Males	2	7.4%
Hispanic Males	1	3.7%
	<hr/>	<hr/>
	27	100%

Demographic Breakdown

Source: DOT
Personnel Records

Brooklyn	6	22.2%
Staten Island	18	66.7%
Queens	2	7.4%
Unknown	1	3.7%
	<hr/>	<hr/>
	27	100%

DEPARTMENT OF TRANSPORTATION
Ferry Agent

Calendar Year
1984

Sex and Ethnicity Breakdown

DOT Ferry Agent Hires from Talent Bank = 5

Source: Talent
Bank Records

White Males	3	60.0%
Black Males	1	20.0%
Hispanic Males	1	20.0%
	<hr/> 5	<hr/> 100%

Total DOT Ferry Agent Hires = 9

Source: DOT
EEO Reports and
Personnel Records

White Males	5	55.6%
White Females	1	11.1%
Black Males	2	22.2%
Hispanic Males	1	11.1%
	<hr/> 9	<hr/> 100%

Demographic Breakdown

Source: DOT
Personnel Records

Bronx	1	11.1%
Brooklyn	1	11.1%
Staten Island	5	55.6%
Unknown	2	22.2%
	<hr/> 9	<hr/> 100%

DEPARTMENT OF TRANSPORTATION
Ferry Agent

Calendar Year
1985

Sex and Ethnicity Breakdown

DOT Ferry Agent Hires from Talent Bank = 9

Source: Talent
Bank Records

White Males	6	66.7%
Black Males	3	33.3%
	<hr/> 9	<hr/> 100%

Total DOT Ferry Agent Hires = 6

Source: DOT
EEO Reports and
Personnel Records

White Males	5	83.3%
Black Males	1	16.7%
	<hr/> 6	<hr/> 100%

Demographic Breakdown

Source: DOT
Personnel Records

Staten Island	3	50.0%
Queens	2	33.3%
Unknown	1	16.7%
	<hr/> 6	<hr/> 100%

DEPARTMENT OF TRANSPORTATION
Assistant Highway Repairer

Calendar Year
1985

Sex and Ethnicity Breakdown

DOT Assistant Highway Repairer
Hires from Talent Bank = 35

Source: Talent
Bank Records

White Males	20	57.1%
Black Males	7	20.0%
Black Females	1	2.9%
Hispanic Males	7	20.0%
	<hr/>	<hr/>
	35	100%

Total DOT Assistant Highway Repairer Hires = 44

Source: DOT
EEO Reports and
Personnel Records

White Males	36	81.8%
Black Males	4	9.1%
Black Females	1	2.3%
Hispanic Males	3	6.8%
	<hr/>	<hr/>
	44	100%

Demographic Breakdown

Manhattan	2	4.5%
Bronx	6	13.6%
Brooklyn	6	13.6%
Staten Island	13	29.6%
Queens	10	22.7%
Unknown	7	16.0%
	<hr/>	<hr/>
	44	100%

DEPARTMENT OF TRANSPORTATION
Debris Remover

Calendar Year
1984

Sex and Ethnicity Breakdown

DOT Debris Remover Hires from Talent Bank = 20

Source: Talent
Bank Records

White Males	7	35.0%
Black Males	10	50.0%
Black Females	1	5.0%
Hispanic Males	1	5.0%
Hispanic Females	1	5.0%
	<hr/> 20	<hr/> 100%

Total DOT Debris Remover Hires = 43

Source: DOT
EEO Reports and
Personnel Records

White Males	20	46.5%
Black Males	15	34.9%
Black Females	1	2.3%
Hispanic Males	6	14.0%
Hispanic Females	1	2.3%
	<hr/> 43	<hr/> 100%

Demographic Breakdown

Source: DOT
Personnel Records

Manhattan	2	4.7%
Bronx	8	18.6%
Brooklyn	8	18.6%
Staten Island	5	11.6%
Queens	7	16.3%
Unknown	13	30.2%
	<hr/> 43	<hr/> 100%

DEPARTMENT OF TRANSPORTATION
Debris Remover

Calendar Year
1985

Sex and Ethnicity Breakdown

DOT Debris Remover Hires from Talent Bank = 15

Source: Talent
Bank Records

White Males	4	26.7%
Black Males	11	73.3%
	<hr/>	<hr/>
	15	100%

Total DOT Debris Remover Hires = 29

Source: DOT EEO
Reports and
Personnel Records

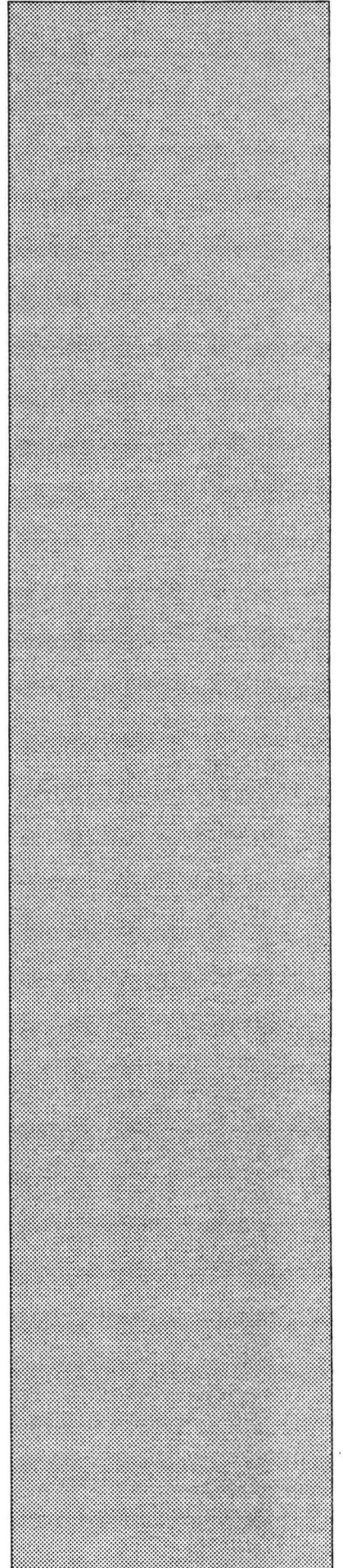
White Males	5	17.2%
Black Males	22	75.9%
Hispanic Males	2	6.9%
	<hr/>	<hr/>
	29	100%

Demographic Breakdown

Source: DOT
Personnel Records

Manhattan	4	13.8%
Bronx	4	13.8%
Brooklyn	4	13.8%
Staten Island	2	6.9%
Queens	6	20.7%
Unknown	9	31.0%
	<hr/>	<hr/>
	29	100%

Attachment I



LASTNAME	FIRST	AREA	AGNCYNM	HIREDATE	SALARY	TITLE	comme
Prinzo	Robert	vlln	DOT	06/25/84	20211	ASST. HWY. REP.	HIRED

-WARNING- No rows satisfy the WHERE clause

more perkins for Valbone

LASTNAME	FIRST	AREA	AGNCYNM	HIREDATE	SALARY	TITLE	comme	
Argiento	John	dmrc	DOT	06/18/84	20211	ASST. HWY. REP.	HIRED	
Deutchen	George	dmrc	DOT	06/18/84	20211	ASST. HWY. REP.	HIRED	
DiGianni	Vito	dmrc	DOT	06/15/84	14781	DEBRIS REMOVER	HIRED	
Schiulaz	Christophe	dmrc	DOT	10/15/84	-0-	SERV. INSP.	HIRED	
LoBello	John	dmrc	BUILDINGS	10/08/84	16000	URBAN TECH.	HIRED , acti	
DeGuardia	Don	dmrc	DEP	2/85		LABORER (HIRED)	ve ag ain.	
DiCarlucci	John	dmrc	DOT	06/15/84	14781	DEBRIS REMOVER	HIRED	
Macchia	Joseph	dmrc	DEP	12/01/84	-0-	LABORER	HIRED	
LASTNAME	first	area	realsal	titl1	titl2	titl3	TITL4	endt

LoBello	John	dmrc	\$15,000.00	10132	10112	80112	22100	08/01/84
Goldfinger	Michael	dmrc	\$12,371.00	60617	56056	60407	-0-	08/14/84

-WARNING- No rows satisfy the WHERE clause

LASTNAME	first	area	realsal	titl1	titl2	titl3	TITL4	endt
----------	-------	------	---------	-------	-------	-------	-------	------

Alvarez	Herbert E	grc	\$17,500.00	10112	10132	10104	-0-	08/01/83
---------	-----------	-----	-------------	-------	-------	-------	-----	----------

Cartrone Ariel (Garcia) DEP 2/85 Laborer HIRED

Hired*

Exhibit

6

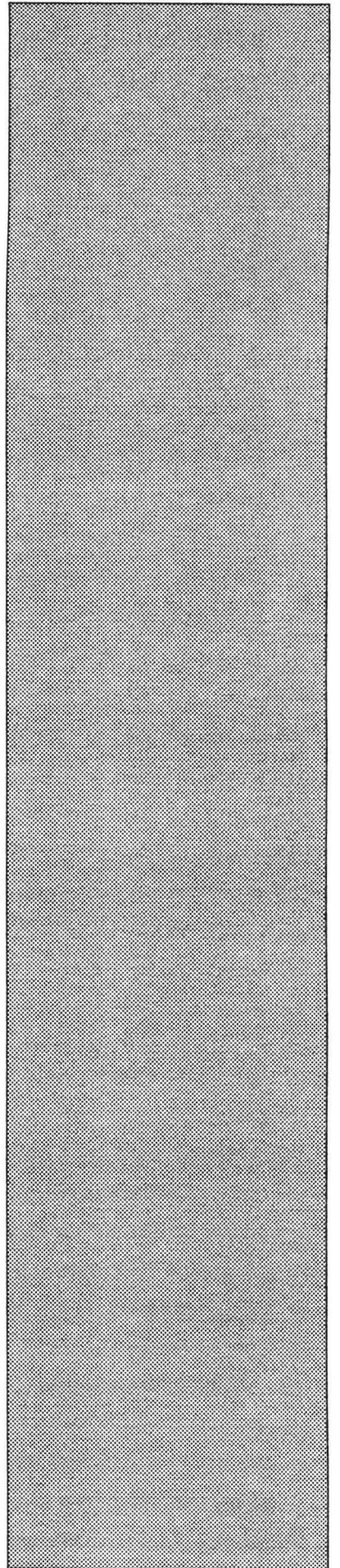
MOSLEY Ex-3
3/7/89

ATTACHMENT
I

AGENCY	lastname	FIRST	HIREDATE	TITLE	SALARY	area	E	S
DEP	Calabro	Thomas	-0-	LABORER	-0-	gldn	C	M
DEP	Colon	Luis	04/09/84	LABORER	26518	gldn	H	M
DEP	Gallina	Lawrence	03/04/85	LABORER	25518	gldn	C	M
DEP	Jaswick	Scott	01/01/85	LABORER	26518	gldn	C	M
DEP	Paglinco	Tom	02/01/85	LABORER C	26518	gldn	C	M
DEP	Perry	Theo	09/16/85	Laborer C	29169	gldn	B	M
DEP	Schneider	Fred	03/04/85	LABORER C	26518	gldn	C	M
DEP	Slutsky	Kenneth	01/01/85	LABORER	26518	gldn	C	M
DEP	Walden	John	04/09/84	LABORER C	26518	gldn	B	M
Dept. Of Correction	Gill	Reynold	04/01/85	College Aide	-0-	gldn	B	M
DSP	Ienco	Vincent	05/15/85	Motor Vehicle Oper.	17600	gldn	C	M
DOT	Caraballo	Jose	11/01/84	DEBRIS REMOVER	15000	gldn	H	M
DOT	Cioriani	Michael	04/29/85	SERV. INSPECTOR	15158	gldn	C	M
DOT	Cruz	Jorge	09/01/84	ATTENDANT	13000	gldn	H	M
DOT	Martinez	Jose	04/23/84	FERRY AGENT	17422	gldn	H	M
DOT	Piselli	Thomas	08/01/84	URBAN TECH.	0	gldn	C	M
DOT	Puma	Carl	04/29/85	PAW II	26000	gldn	C	M
DOT/ N/A	Armstrong	Cyril	11/01/84	DEBRIS REMOVER	15000	gldn	B	M
POLICE	Rivera	Norberto	08/01/84	Auto Mechanic	1344	gldn	H	M
-0-	Gill	Reynold	-0-	-0-	-0-	gldn	B	M
-0-	Ienco	Vincent	-0-	-0-	-0-	gldn	C	M

21 TOTAL
5 H/M
5 B/M
11 C/M

Attachment J





THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N. Y. 10007

JOSEPH DeVINCENZO
SPECIAL ASSISTANT TO THE MAYOR

5/20/85

Marsha,

A.H.R. and Service Inspector
lists are attached.

AHR's are listed in
priority order.

Peter Gilroy

ATTACHMENT

J

ASSISTANT HIGHWAY REPAIRER

1) Christopher Schuilaz
Bronx, NY 10465
(212) (212)

Handwritten: 10/15/84
Sawicki

2) Russell Lockwood
Staten Island, NY 10301
(718)

3) William Hnatio
Bklyn, NY 11209
(718)

Handwritten: Hnatio

4) Joseph Curry
Staten Island, NY 10308
(718)

5) Ernest Moerlins
Staten Island, NY 10304
(718)

6) Giovanni Buono
Staten Island, NY 10303
(718)

7) Richard Kilichowski
Staten Island, NY 10306
(718)

8) Isidor Suarez
Bklyn, NY
(718)

9) Ralph Slaton
Hollis, NY 11423
(718)

10) John Prociw
Astoria, NY
(718)

11) Dave Eichele
Astoria, NY 11105
(718)

12) Robert Najdek
Astoria, NY

ASSISTANT HIGHWAY REPAIRER

① Hak Kyu Song
Queens, NY 11402
(718)

② Arnold Mitchem
Bronx, NY 10452

Christopher Mustaciulo
Staten Island, NY
(718)

Handwritten: ~~Walter~~ OK

③ Anthony Joseph Ruiz
NY, NY
(212)

④ Frank Ressa, Jr.
Bklyn, NY 11219

Tony Cincotta
Bklyn, NY
(718)

Handwritten: J

Eric Stevenson
Bronx, NY 10468

Handwritten: Jo

Joseph D. Carbone
Woodhaven, NY 11421
(718)

Handwritten: Heenan