
Government of the District of Columbia



Metropolitan Police Department

Testimony of
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***The Metropolitan Police Department: Standards, Training,
Investigation, and Intervention Related to Officer Conduct***

Committee on the Judiciary & Public Safety
Tommy Wells, Chair
Council of the District of Columbia

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John A. Wilson Building
1350 Pennsylvania Avenue, NW, Room 500
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Good afternoon, Chairman Wells, members and staff of the Committee, and members of the public. As the Chief of the Metropolitan Police Department (MPD), I appreciate the opportunity to discuss with you the standards of the Department, and our extensive efforts to ensure that our members meet these standards. In addition, it is important to discuss the consequences both internally and for the city when the Department is forced to retain members who clearly do not meet these standards.

First, I want to reassure the residents of the District of Columbia that they have a police force that is professional, ethical, and dedicated to protecting the public. I am proud of the men and women of this police department. They work long hours in often difficult conditions. And as the events of this past year so clearly reminded everyone, each time they put on the uniform, they may be risking their lives to protect us. I believe in the officers of this department.

The recent allegations of criminal misconduct by officers absolutely outrage me. Those few officers' actions dishonor the oath that we all swore to uphold when we first put on the uniform. No officer is above the law whether on or off duty; unlike any other profession, police officers are held accountable for their off-duty conduct. Any officer engaged in criminal misconduct will be investigated and prosecuted regardless of whether that misconduct occurred while they were in uniform or on their own time.

But no one should infer that the shocking actions of a few officers somehow show such behavior to be a regular occurrence in the department. It is not. While the recent attention has been on the worst cases, it is important to put this in perspective. In the past three years, the number of police officers arrested has decreased 31 percent. Almost half of these arrests are for off-duty traffic offenses, typically impaired driving. Other charges include urinating in public and possession of an open container of alcohol. Less than half of these arrests resulted in a conviction or guilty plea. While any violation of the law is a serious matter for a police officer, this is not the widespread police corruption that the public may imagine when looking at the headlines.

That said, any officer misconduct, whether criminal or administrative, is of significant concern to me and the Department. That is why we have multiple layers to help hire the right people and support them to ensure they meet the Department's and the public's standards, as well as proactive strategies to identify those that fail to meet that standard throughout their career.

Recruiting and Hiring

The Department's current hiring standards are the most rigorous they have been in decades. We currently hire about one out of every 25 people who submit applications. In other words, in order to hire a class of 30 recruit officers, we need 750 people to fill out an application. This is a more selective hiring rate from just a few years ago when we hired about one in 10 applicants. And it is an extraordinary improvement from the hiring standards from the late 1980s and early 1990s. Moreover it is significantly more selective than most other police departments.

The Department has been able to achieve this while still meeting its hiring goals by analyzing and improving its outreach strategy and reorganizing its vetting process so that people who are not committed to law enforcement or have clear disqualifiers are eliminated early in the process.

For example, MPD's Recruiting Division conducted a thorough analysis of outreach mechanisms during FY2013. In reviewing more than 11,000 applicants' initial survey data, we found that more than 75 percent of applicants learned about the Department's entry-level job opportunity through a web-based medium, whereas less than half a percent initially learned through an in-person job fair. Thus our strategy is more focused on web-based advertisements that reach a diverse community, including veterans and the Historically Black Universities and Colleges.

The background process for MPD candidates is extensive. Each prospective candidate:

- Completes an online application and is scheduled to attend a mandatory New Candidate Orientation (74% discontinue the process after the orientation);
- Completes a 33-page online Personal History Statement, which includes a pre-polygraph survey;
- The candidate then returns for a mass processing day that includes a body fat screening, physical agility test, writing sample, written examination, preliminary applicant screening and personal interview with a trained investigator, fingerprinting, and scheduling of the polygraph examination
- Completes a comprehensive pre-employment document with more than 400 questions prior to taking a polygraph examination so that the examiner can ensure the applicant is answering questions consistently.

During this process, candidates with automatic disqualifiers under District personnel regulations are eliminated from the process, thereby reducing the workload for those conducting the detailed investigations of each candidate. These investigations include "old school" methods focusing on personal references and employment suitability, such as visits to the applicant's primary residence and place of employment. Investigators speak with at least three personal references, three neighborhood references, and all previous employers to gain insight on the individual's suitability and stability for a job with the Department.

Investigators also examine new sources of information, such as checking the social media accounts of all pre-employment sworn hires. Candidates are required to list all their social media sites and investigators review any publicly available information to identify any disqualifying or questionable material.

Candidates then proceed to the Police and Fire Clinic for a thorough medical and psychological examination to determine suitability. And of course, all of this is accompanied by extensive review by officials of the Recruiting Division. Lastly, upon approval by the Recruiting Division, the individual is recommended for hire and transmitted to the Director of the Human Resource

Management Division for a final review and determination on suitability. This bifurcated review process allows several independent reviewing officials to ensure the Department is hiring only the best qualified individuals.

Supervision and Auditing

Once an officer is on the job, the Department has many systems in place to determine whether they are meeting standards for conduct. Perhaps the most important check is front-line supervision. There is no better way to judge an officer than observing what he or she does and addressing behavior immediately. This is done as the probationary officer hits the street with their training officer for the first 12 weeks in the field. The importance of first hand observation cannot be overstressed, which is exactly why I continually implore the community to file complaints – either with MPD or with the independent Office of Police Complaints – any time they think an officer is engaged in misconduct, inappropriate activity, or simply isn't providing a high level of professional service.

In addition to immediate action by supervisors, MPD's Supervisory Support Program (SSP) – what is sometimes referred to as an Early Warning Tracking System – helps establish a fair and consistent process for identifying and helping MPD employees engaging in a pattern of behavior that is inconsistent with MPD policies and standards. The SSP helps supervisors address the behavior before it becomes a problem for the employee, the public, or the Department by using data collected within MPD management systems as a tool to enhance support systems—such as training, coaching, and counseling—for MPD employees. It is intended to identify problematic behavior and help members learn or practice alternatives to this behavior before a potentially career-damaging incident occurs or pattern is established.

In addition to individual level interventions, my team and I are constantly evaluating information to identify risk factors. This information has supported both proactive campaigns to highlight for officers certain risks to their careers – such as drinking and driving – as well as developing strategies to identify misconduct and corruption. Each year, I work with MPD's Office of Risk Management to develop an audit plan that tests activities or functions that have a higher risk for misconduct or corruption. For example, conducting regular audits of confidential funds puts officers on notice that we are tracking the use of this money. In addition, in 2010, I directed the Internal Affairs Division to implement an "Integrity Check" program to root out any corruption by conducting targeted audits and random checks, and investigating any information about potential officer misconduct. Our efforts have yielded results: Over the past five years, we have uncovered criminal misconduct by five employees, all of whom were arrested and prosecuted.

All of this helps to ensure that we hire the best officers and they are meeting high standards of conduct. However, as we have been horribly reminded in the past few months, the best pre-hire screening, supervision, audit, and investigations still cannot guarantee that misconduct doesn't happen. Although there is significant study and science supporting tools to determine suitability for employment, there is no perfect predictor of who will commit egregious misconduct or a

crime. That only exists in movies. Even more challenging is trying to predict which previously successful officers may cross the line and engage in misconduct late in their career because of a traumatic event in their personal lives. We cannot observe what goes on while an officer is off-duty in their own home. And even on-duty, we cannot observe every interaction with the public. That is why I am grateful that members of the public come forward to report information to us. My team and I are committed not only to thoroughly investigating allegations of misconduct, but to taking immediate action if necessary. As you know, when we received actionable information about the two recent cases, we arrested one officer within hours. It took longer to present formal charges against the second officer, but his police authority had already been revoked.

Termination

While there has been significant focus on the screening the Department performs to ensure that we are only hiring and retaining the best officers, I think there has been too little focus on supporting the Department's efforts to permanently remove those few officers who engage in conduct that compels any reasonable person to realize that they should not be serving in a trusted public safety position. As I have stated before, the current structure of termination appeals, specifically the arbitration process, has failed to serve the public safety interests of the Department, and in doing so, has failed District residents.

Time and time again, arbitrators have forced the Department to rehire officers who had been fired for misconduct. In many of these cases, there is no dispute that the member engaged in misconduct. Instead, arbitrators focused on missed deadlines or other minor procedural errors that had nothing to do with the merits of the case. Instead of asking that the Department hold the responsible official accountable, or imposing a fine or other sanction on the Department, the arbitrator orders the officer to be reinstated, regardless of the egregiousness of the misconduct committed. In other cases, arbitrators have simply disagreed that termination is an appropriate penalty, and have substituted their judgment for mine as to who should be entrusted to safeguard the residents of the District.

Examples include:

- An officer who twice engaged in domestic violence, became intoxicated, put his gun to his head and threatened suicide, then discharged his weapon into the air. As a result he was, involuntarily committed for a five-day psychological evaluation. Three years after his termination we were ordered to re-instate him, allowing this 3-year period to serve as a suspension instead of a termination;
- An officer who caught individuals urinating in an alley compelled them to take off their sweaters, wipe up the urine, and put the sweaters back on – in January. The arbitrator ordered the officer reinstated with a year-and-a-half suspension in lieu of termination.
- An officer who rammed his wife's car and was arrested, as well as the subject of both interim and final protective orders, was reinstated when an arbitrator decided that termination was too harsh, but that a five-year suspension was more appropriate.

- An officer who was terminated in 2005 for lying to avoid paying a speeding ticket was subsequently reinstated because the Department missed a deadline. However, during the period that he was terminated, he was arrested and charged with Impersonating a Police Officer, in another state, when once again the officer was trying to avoid a speeding ticket that was issued after he was traveling 55 miles per hour in a school zone. An arbitrator overturned the second termination as well, rejecting the findings of three senior Departmental officials and holding that the Department had insufficient evidence to remove the officer. In rescinding the termination, the arbitrator held the officer could not have been attempting to impersonate a police officer since he was not “trying to convey that he was active on the police force at that very minute.”
- An officer who was a passenger in a police cruiser that struck a pedestrian, causing the victim to suffer a fractured skull and bleeding on the brain, failed to report the incident, and lied when questioned about it. An arbitrator found that termination was too severe of a penalty and ordered him reinstated with a 30-day suspension.
- An officer who was terminated in 2006 for his involvement in narcotics distribution, the use of ecstasy, false statements, using law enforcement databases for purposes unrelated to law enforcement, and association with drug dealers and extortionists was ordered reinstated when the arbitrator found that the Department had violated the 90-day rule and erred in crediting the testimony of drug dealers implicating the officer over defense testimony from fellow law enforcement officers. In short, the arbitrator went out of his way to use technicalities and his judgment substituted for law enforcement professionals to determine that a drug dealer should have a gun and a badge and carry the authority of a police officer.
- And lastly, a sergeant failed to report to the Department a home invasion and robbery involving his daughter whose boyfriend was a convicted drug dealer. Instead, he spoke to the boyfriend who threatened retaliation against those responsible, saying “I’m going to do what I have to do, and I’ll go to jail behind this one.” The sergeant took no action in response to the threat and the next day, a neighborhood resident who was involved in the robbery was shot and killed by someone hired by the boyfriend. Though terminated by the Department, an arbitrator applied the 90-day rule retroactively to the sergeant’s misconduct (which had occurred before the 90-day rule went into effect), and ordered him reinstated.

These are just some examples of termination cases; there are other cases where arbitrators have rescinded demotions and other forms of discipline in the face of admitted egregious misconduct.

Again, these examples do not represent the vast majority of men and women on this Department who serve honorably, but we are all tarnished by those few members who engage in such egregious misconduct. That damage is only magnified when members who engage in such misconduct are ordered back to work. The corrosive effect of such arbitration decisions cannot be understated. Being forced to rehire members who are not fit to wear our badge unquestionably hurts the morale and performance of the entire Police Department, and having these members on the force does a disservice to the community we are sworn to protect. It also sends a message to

those tempted to engage in misconduct – that even if you are caught and terminated by the Department you still have a pretty good chance that an arbitrator will give you your job back.

It is absurd to invest so many resources in rigorously screening applicants, conducting integrity checks, investigating allegations of misconduct, having senior officials conduct termination hearings, and the Chief of Police render final decisions on whether or not officers are fit to serve, only to have those efforts undermined by unaccountable arbitrators who appear to be more interested in technicalities than public safety. Common sense legislative limitations on arbitrator authority are desperately needed.

Councilmember Wells, if you and the Council want to help me ensure that we have the highest quality men and women serving the public, then I ask you to work with the administration on a legislative proposal to limit the power of arbitrators to put bad cops back on the payroll. The legislation should contain at least four provisions:

1. Make all arbitration recommendations in termination and demotion cases non-binding. I will take their recommendations into consideration, and if there is newly discovered exculpatory or mitigating evidence, I will weigh it accordingly, but I should not be forced to reinstate an individual who lacks the integrity necessary to be a police officer.
2. Prohibit arbitrators from rescinding discipline for a technical error or missed deadline. Too often, arbitrators view disciplinary cases as a game of finding out which “I” we failed to dot or “T” we forgot to cross. The focus of these cases should be on the merits. If the officer engaged in misconduct, the discipline should stand, even if it was served on the member one day late.
3. Prohibit arbitrators from substituting their judgment for that of the agency director. I am the one who is ultimately responsible for the conduct and performance of the Department, and I am accountable to the Mayor, the Council, and the residents of the District. I should not be forced by an arbitrator who does not live in this city to re-hire and send into the community those individuals who have demonstrated through their egregious acts of misconduct that they are unfit to serve.
4. Require arbitrators to leave the original penalty in place in cases where misconduct is upheld. We have had cases where arbitrators have decided that members should be suspended for months, even years, but that their misconduct does not rise to the level of termination. That is ridiculous. If we are able to demonstrate that the member engaged in the misconduct charged, the penalty should stand undisturbed.

On the topic of deadlines, the 90-day law should be repealed, period. There is no question that the interests of public safety are undermined by an obstacle to imposing discipline that is applicable only to the Police and Fire Department. Whatever the intentions when the law was passed, experience has shown that it only serves to keep the bad employees on the payroll of the

police and fire departments. The disciplinary case arising out of the death of David Rosenbaum is a clear example of the impact that this law has on the public.

As you may recall, in the Rosenbaum case the Office of the Inspector General found that the ambulance driver took the critically injured Mr. Rosenbaum to Howard University instead of the much closer Sibley Hospital because she wanted to stop by her home after dropping him off. However, the city was forced to rehire her because the 90-day law makes no exceptions for cases under investigation by the Inspector General. Nor does it provide an exception if an officer is arrested outside of the District, leading to a significant disparity between the internal investigations in cases where an officer is arrested in the District compared to an arrest anywhere else. As most people know, under the Fifth Amendment to the US Constitution, a person has a right not to incriminate himself, so we cannot compel testimony in an administrative matter while a criminal charge is pending. If the charge is pending in the District, the 90-day period will not start until after the criminal matter is decided. However, that does not apply to cases outside the District, a law that defies all logic.

The Rosenbaum case and the examples provided above demonstrate that arbitrators have applied and interpreted the 90-day law in ways that were never intended, applying it to conduct that occurred before it went into effect, forcing the Department to move forward with cases based on criminal conduct occurring outside the District, and making no exceptions for Inspector General or Equal Employment Opportunity investigations. The Council recognized that the old 45-day law had unintended negative consequences and repealed it. The Rosenbaum case prompted two Mayors to ask the Council to amend or repeal this provision – most recently when Mayor Gray sent the *Police and Fire Departments Commencement of Discipline Amendment Act* to the Council in 2012 – but to no avail. It has become clear with time and experience that the law should be repealed in its entirety.

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I appreciate the opportunity to share with you and the public how the Department is working to ensure that all officers meet our high standards and provide exemplary service to the District. Community trust is essential to effective policing, and I have made building that trust a cornerstone of my tenure as Chief. Rest assured, when a police officer violates that trust, I want the issue addressed quickly and effectively. I ask for the community's assistance in coming forward to report and support the investigations of any violations, and the Council's support to ensure that we can hold accountable members who violate that public trust. At this time, I would be happy to address any questions.