

1976 WL 13343  
United States District Court, N.D. Ohio.

The Shield Club, et al.  
v.  
The City Of Cleveland, et al.

No. C 72-1088. | Apr. 22, 1976.

## Opinion

WILLIAM K. THOMAS, District Judge: --

**\*1** This court's Memorandum and Order of July 6, 1974, concluded and determined

. . . that some but not all of the screening procedures used by the Cleveland Police Department and Safety Department have directly contributed to a higher proportion of blacks than whites being rejected although certified to the Cleveland Police Department from the 1972 eligibility list.

Therefore, under authority of the Equal Protection Clause of the Fourteenth Amendment the Cleveland Service Commission was directed.

. . . to draft, after consultation with the CPD, a set of written standards that will prohibit and prevent any racially discriminatory practice or procedure in all aspects of the screening of persons (male and female) who have passed the CPD written entrance examination. Not intending to exclude any aspect not herein mentioned, the court directs that the foregoing standards shall apply to the personal history interview, and background investigation of each person, the medical examination, and the psychological and/or psychiatric examination.

In undertaking to comply with this court's order, the Civil Service Commission engaged a Screening Evaluation Group, composed of a psychiatrist and three

psychologists, which Group reported its findings to the Civil Service Commission (CSC) on May 21, 1975. From June 1975 to February 1, 1976, the CSC conducted open hearings and work sessions at which views and recommendations were received from many different interested and knowledgeable persons, including Chief of Police Lloyd F. Garey. In consultation with Dr. Norman D. Henderson, and with the assistance of CSC Senior Examiner Tony Dolejs, the Commission prepared and adopted "a condensed version of the findings of the Screening Evaluation Group Report of May 21, 1975, and modifications resulting" from said hearings and work sessions.

Entitled "Screening Process for Entrance to Cleveland Police Department," the "Final Report" of the CSC was filed with this court on February 2, 1976. On March 30 and 31, this court took testimony relating to the Screening Process Report of February 2, 1976, from Lynn P. Marcy, polygraph authority of Detroit, Michigan, Dr. Henderson, and William LeHecka, secretary of the CSC. Testimony concerning the proposed medical and physical standards was received from City of Cleveland's Director of Health, Roland F. Swanger, M.D. Subsequently pursuant to this court's order Dr. Henderson supplemented and adapted the polygraph part of the Screening Process Report to conform to the testimony of Lynn P. Marcy; and Dr. Henderson made certain other amendments to the Report growing out of his testimony. As thus supplemented and amended the Report was filed with the court and served on all interested parties on April 9, 1976.

On April 16, 1976, a hearing on the Report was held at which testimony was taken from Chief Lloyd F. Garey. In the course of his testimony he took exception to or suggested changes in various items in the Screening Process as contained in the Report. Giving careful consideration to Chief Garey's exceptions and suggestions, this court has further revised the Report, after consulting with and receiving comments from counsel for all parties at a hearing held on April 19, 1976.

**\*2** It is concluded and determined that the Report, as promulgated by the CSC, amended and revised as aforesaid, and attached hereto and made a part of this order, is consistent with and satisfies the directions and standards prescribed in this court's order of July 6, 1974. The Report, on its face, is found to be nondiscriminatory as to race; and therefore the Report is accepted and approved.

Finally, this court renews its retention of jurisdiction as thus set forth in the order of July 6, 1974:

Roughly 39% of the first 400 persons who passed the test are minorities. If, after all steps have been taken through the screening procedures and through the CSC appeal procedures, a disparate departure (i.e., more than 2% to 3 %low 39%) from the results of this test develops, then this court retains jurisdiction generally to determine whether or not the use of the screening procedures in any way has had a constitutionally impermissible effect.

IT IS SO ORDERED.

## **SCREENING PROCESS REPORT**

### **OVERVIEW OF SCREENING PROCESS**

#### ***I. INITIAL SELECTION***

- A. Top scoring candidates on entrance exam (approximately 2 to 3 times the number expected to be appointed to the next academy class) are chosen for screening.
- B. Candidates complete Personal History Statement and are scheduled for medical.

#### ***II. MEDICAL EXAMINATION***

- A. Screening terminates for candidates rejected on medical grounds.
- B. Civil Service Commission notifies rejected candidates and schedules remainder for MMPI.
- C. All files sent to Safety Department after medical.

#### ***III. BACKGROUND INVESTIGATION***

- A. Screening terminates for candidates with previous felony conviction.
- B. Polygraph exam scheduled when background investigation completed.

#### ***IV. POLYGRAPH EXAMINATION***

- A. Session videotaped.
- B. Polygraph report forwarded to psychiatrist only.

#### ***V. PSYCHOLOGICAL-PSYCHIATRIC SCREENING***

- A. MMPI given by Civil Service Commission and scored by commercial service.
- B. CSC assigns candidate for one or two psychiatric interviews based on MMPI.
- C. Psychiatrist has access to medical, background, and polygraph forms.
- D. Psychiatrist may request further medical or background information.
- E. Rejection must be based on concurring opinion of two psychiatrists.
- F. Medical form, Personal History Statement, background report, psychiatric opinion, and Polygraph Summary Form forwarded to Safety Director.

#### ***VI. FINAL SAFETY DEPARTMENT SCREENING***

- A. Some candidates rejected based on composite behavior.
- B. Safety Director completes rejection form stating reasons for decision.
- C. CSC notifies rejected candidates and schedules appeals.
- D. Safety Director compiles list of names for academy appointment with proportions of minorities and females equal to original proportions passing the entrance exam.

## BACKGROUND INVESTIGATION

**\*3** I. *Summary of Evaluation of Current Procedures.* The screening evaluation group indicated that background investigation is utilized by virtually all police departments, and those used by Cleveland Police Department are consistent with general standards of police selection. Further, the assumption that the applicants' prior behavior with regard to these areas is relevant to performance as a police officer appears sufficiently supported, both on logical and empirical grounds, to warrant that collection of such data be continued.

Within the CPD, although the potential for bias in data collection and reporting does exist, the committee was confident that any bias that occurred was coming primarily in the data-utilization rather than the data-collection level. A detailed analysis of 1972-1973 applications did not reveal evidence of significant bias toward minority groups in the form and quality of background investigation reports. The committee also found no instance of a candidate who appeared to have been rejected on the basis of undocumented background information or on the subjective comments on the part of the investigating officer. The committee thus concluded that no major changes in background investigation were necessary, nor should the introduction of elaborate procedures to cross-check or verify information be instituted. Other recommendations concerning the selection and training of personnel to do background investigations are provided in the original report. The remainder of the background section of the original report summarize the rationale for using various background characteristics in selection procedures.

## II. SPECIFIC RECOMMENDATIONS FOR STANDARDS FOR SELECTION RELATED TO THE BACKGROUND EXAMINATION.

### A. Residence Check

1. Material necessary for general screening evaluation (to be used in conjunction with all other data in file): summary comments (favorable, no opinion, unfavorable; specific reasons for the latter must be given in terms of clearly defined behavior or activities, with specific instances of behavior documented if possible).

2. Material specifically to be excluded: general statements not supported by specific details.

### B. Employment

1. Grounds for absolute rejection: Within the past five years, either discharge from employment on two or more occasions, or disciplinary action or discharge on three or more occasions. (Specific reasons or circumstances for discharge or disciplinary action, including company policy violated, should be documented.)

2. Material necessary for general screening evaluation: general employment history with emphasis on any employment disciplinary action.

3. Material specifically to be excluded: general statements not supported by specific details or documentation.

### C. Education

1. Grounds for absolute rejection: no high school diploma or equivalent.

2. Material necessary for general screening evaluation: general educational history, with specific attention to school disciplinary problems.

**\*4** 3. Material specifically not to be included: IQ and other aptitude test scores.

### D. Military Experience

1. Ground for absolute rejection: Military bad conduct discharge, or documented evidence of three or more instances of misconduct or disciplinary action, even though no bad conduct discharge.

2. Material necessary for general screening evaluation: all history of military disciplinary action.

3. Material specifically to be excluded: none.

### E. Arrests, Civil Actions, and Debts

1. Grounds for absolute rejection:

a. Convictions for any of the following (ORC, 1975): aggravated murder, murder, all other felonies defined under Ohio laws, or comparable laws of other states; all federal felonies; and violation of ORC 3719.20 and 3719.44 (prohibitions against the use of narcotic drugs and hallucinogens), excluding one conviction under ORC 2925.11 C-3 for possession of less than 100 grams (3½

oz.) of marijuana--or in its resin form known as hashish, less than 5 grams--or in its liquid form known as hash oil, less than 1 gram; comparable violations under federal laws and laws of other states relating to narcotic drugs and hallucinogens; two or more drug convictions other than previously identified; juvenile felony involving acts of homicide, rape, or armed robbery; two or more convictions for misdemeanors, first or second degree.

b. Three or more traffic convictions involving vehicular accidents in the past five years.

2. Material necessary for general screening evaluation: arrest history, convictions for all felonies, and first- or second-degree misdemeanors, all traffic convictions involving vehicular accidents, candidates history of civil litigation as plaintiff or defendant.

3. Material specifically to be excluded: legitimate debts.

F. Grounds for Absolute Rejection Based on Any One or More Subparagraphs.

1. A pattern of violence towards persons involving two or more areas of the background examination (residence, education, employment, military, arrests for crimes of violence against persons). Note: Arrests for crimes of violence would include all of the following felonies listed in the ORC: Chap. 2903; Chap. 2905; Chap. 2907, excluding 2907.31, 2909.02; 2911.01; 2911.02; 2911. 11.

2. Participation as a plaintiff or defendant in three or more civil court actions reflecting litigiousness, and evidence of repeated inability to interact reasonably with other persons as indicated by behavior reported in one or more of the following areas: background examination of employment, education, or military service.

3. A high incidence of accidents due to negligence, as evidenced by two or more vehicular accidents in which the applicant admitted his negligence or negligence was established in criminal or civil litigation, or a similar history of established negligence in accidents using vehicles or other equipment, as determined in the background examination of employment or military service.

\*5 4. Evidence of alcoholism or a serious drinking problem as independently indicated by at least *two* of the following: one intoxication conviction, evidence of poor work history related to alcoholism, report of repeated intoxication or disorderly conduct obtained during the residence check.

5. Any juvenile felony committed at 15 years of age or older involving violence against other persons (other than previously defined juvenile felony) and a pattern of similar behavior disclosed in the background examination (residence, employment, military, or education).

### **III. SPECIFIC RECOMMENDATIONS FOR SELECTION AND TRAINING OF POLICE PERSONNEL ASSIGNED TO CARRY OUT BACKGROUND INVESTIGATIONS.**

A. Assignment of personnel to background investigations should be based on experience and aptitude rather than availability.

B. The number of investigators should be sufficient to insure an adequate background review without unnecessary delay.

C. Training procedures for new investigators should be formalized. Supervised field investigations should be conducted for at least one week and longer if necessary. Reporting and summation of data should be carefully reviewed and cross-checked independently during the training period. Officers failing to meet adequate standards should be quickly reassigned.

D. Women and minority group officers should constitute a significant proportion of officers assigned to background investigation duties. Assignments should be made at random, although the use of minority group officers to conduct residence interviews for minority candidates may be determined by language and cultural factors.

### **POLYGRAPH EXAMINATION**

I. *General Summary Findings From The Screening Evaluation Group.* The polygraph, as used in the past, did exert a disparate impact, but the bias was exerted principally in the polygraph operator's general recommendation to appoint or not to appoint. This opinion apparently did not always come from admissions related to explicit test questions, but from admissions to unrelated test questions, unexplained deceptions, and comments from the operator unrelated to test questions. Furthermore, the question involving marijuana use did appear to have some disparate impact on minority

applicants. The general conclusion was that the disparate impact resulting from the use of the polygraph as a device would be essentially eliminated by (1) eliminating the operator's general recommendation and comments, (2) having a common list of questions used identically for all applicants, and (3) allowing only test-related admissions to enter the file.

With respect to the value of the polygraph, substantial evidence is cited that a large body of reported admissions of crimes, cheating, etc., do occur prior to the administration of the polygraph, which do not show up elsewhere in police applicant screening. The validity of the polygraph record *itself* as an indicator of detection has still not been demonstrated to be sufficiently high to suggest its use alone as grounds for rejection. Because of this, the procedure recommended is to use judgments about probable deception only as a guide to the eliciting of further information, and not for the final decision. The committee then outlined a fairly complete procedure for the administration of the polygraph tests. The instructions below are based largely on these procedures.

## **II. INSTRUCTIONS FOR THE ADMINISTRATION OF THE POLYGRAPH TEST.**

**\*6** A. Members of the police polygraph unit schedule all appointments for candidates. Candidates are informed that the entire polygraph procedure will be recorded on audio visual equipment. Candidates will be asked to sign the polygraph form at the beginning and at the conclusion of the test with the recorded time of each signature. Security of the video tapes is the responsibility of the police polygraph unit. The video tapes are to be replayed only in cases where an applicant has appealed a rejection based in part on the polygraph, or in cases where an applicant has claimed deviation from the standards of the polygraph exam. At the end of the appeal period, all uncontested tapes are to be erased.

B. No advance information about the candidates will be forwarded to the polygraph operators, except for the Cleveland Police Department Personal History Statement form.

C. On arrival, the candidate is read the pre-test statement concerning the polygraph exam. The operator then reviews the CPD Personal History Statement form with the candidate, asking for any clarifications. During these preliminary steps, the operator should try to establish rapport with the candidate and to set the candidate at ease. The operator then reads to the candidate the list of

relevant polygraph questions to be used during the exam, explaining that these are some of the questions which will be asked during the testing session. The candidate then answers each question in writing. On any questions on which one admission has been made, the polygraph operator asks "Beside what you have written, have you ever (repeats question)?" Any additional admissions are added to the form.

D. During the actual polygraph examination, the operator records the verbal response of the candidate on the question form beneath the appropriate question. Except for the irrelevant "norm" questions described below, operators ask only the questions on the form in the order in which they appear, using the exact wording given. Only in the case of an admission will a follow-up question be asked. In all questions, except the question concerning the CPD Personal History Statement, the follow-up question takes the form: "Beside what you have told me (repeat question)?" On the follow-up question related to the CPD Personal History Statement, the operator may ask a series of questions corresponding to individual items in the Statement (e.g. "Beside what you have told me, did you falsify your employment history? Beside what you have told me, did you falsify your traffic record? Beside what you have told me, did you falsify your medical history?")

*Note: Although the same relevant questions will be asked to all candidates, the order in which the questions will be asked will be different. There will be several different question forms available to the operator, each containing the same questions, but in a different order.*

**\*7** *Note: The polygraph operator will ask the pseudo-relevant question "Do you intend to falsify any of your answers during this test?" as the first question during the actual polygraph testing. The response to this question is not recorded, since it is used only to allow for heightened responses typically made in answering the first inquiry. The polygraph operator may also insert irrelevant "norm" questions (e.g. "what is your name?") between relevant questions, in accordance with proper technique to break an arousal response pattern of a candidate. The operator may also utilize some of the special measures to help differentiate between candidates with unusual "normal" patterns (e.g. unusually slow and/or deep normal respiration patterns) and candidates engaged in purposeful counter-measure attempts (e.g. deliberately slow and/or controlled respiration patterns). These might include any or all of the following anticountermeasure tests:*

*1. "Silent Test"*

2. "Silent Answer Test"

3. "Yes Test"

4. "Yes and No Test"

5. "Irrelevant Yes and No Test"

*Note: It is assumed that the present procedure of administering the list of relevant questions, followed by a control test (double verification test), followed by a repeat administration of the relevant question list, will continue to be used.*

E. The operator indicates the appropriate question number on the polygraph record (machine printout) during the session. At the end of the session, the operator indicates on the appropriate place on the polygraph form the presence or absence of probable deception. The polygraph record is then given to a second examiner for blind evaluation. After evaluation is complete, the second evaluator's conclusions concerning probable deception are also entered on the polygraph form. If agreement exists, the form is filed accordingly. If disagreement exists, the polygraph record is submitted without comment for blind evaluation by a third examiner, and his/her judgment is also entered on the polygraph form. The polygraph form used during the examination is forwarded to the psychiatrist reviewing the candidate's medical history and other data. The psychiatrist, in turn, will fill out the Polygraph Summary Form to be used by the Safety Director in the final screening process and which form will record any admissions of undetected crime.

F. It is assumed that the Safety Department will provide training to minority and women police officers as polygraph operators to supplement the present group of operators.

G. Grounds for absolute rejection: none. (All information is used as a basis for judgment in the psychiatric interview in the general screening evaluation.)

## PSYCHOLOGICAL AND PSYCHIATRIC EXAMINATIONS

I. *Summary of Screening Evaluation Group Findings.* The use of psychological testing as a part of the screening process is justified as a means of increasing the accuracy of psychiatric screening interviews. This is done by

selecting out a smaller group of individuals who are more likely to show evidence of psychological problems of pathology than the remaining candidates. More time should then be spent with these candidates in the psychiatric interview than with other candidates. The MMPI is widely used and quite acceptable as a screening device for this purpose. A series of decision rules are recommended determining cut-off scores for persons to be interviewed in depth.

\*8 Previously, all candidates who were not rejected earlier were given the psychiatric interview. The psychiatrist reviewed medical history and physical examination data, the results of the MMPI, the background check, and the polygraph examination. He/she was instructed to look for evidence that would indicate the existence of clinically disabling disorders involving (a) defects in perception, impulse control, or judgment, (b) psychoses or neurosis, (c) character defects, such as anti-social personality, certain perversions, addictions, or impulse-ridden characteristics, and (d) clinically recognizable brain damage or retardation. If the psychiatrist contemplated the rejection of the candidate, he/she could request a second opinion from an additional psychiatrist. In these cases, the second examiner was given all information, including the first psychiatrist's judgment. There were no explicitly set down criteria for selection or rejection of examinees. A number of disorders that were generally regarded as grounds for rejection are outlined in the consultant's report.

It was the committee's opinion that, except for the most grossly clinically disturbed persons, very little professional reliability could be placed on an hour-long psychiatric examination alone. It was felt that most persons could provide a satisfactory appearance for an hour-long session, and, in general, the efficiency of psychiatric interviews as a screening device is very low. It was also reported that many large cities, including New York, Washington, and Cincinnati do not use psychiatrists in routine screening procedures.

The group recommended that the requirement of board certification or board eligibility for the psychiatrists remain, and that a psychologist or psychiatrist pre-screen all materials and send to the psychiatric interview only those applicants whose MMPI scores or other records indicate some question about their emotional and/or intellectual stability for police work. Psychiatric judgments are to be rendered only as psychiatrically rejected or accepted, or acceptable with a condition that the applicant be carefully observed during the probationary period for specific tendencies identified by the psychiatric examiner.

The group further recommended that all pre-selected candidates (based on MMPI) receive two psychiatric evaluations to increase the reliability of the evaluations and that one of the psychiatrists should be of the same sex and ethnic or racial background as the candidate. The two psychiatric interviews and the final decision concerning acceptance or rejection of a candidate should be done independently. It was further recommended that all examining psychiatrists (a) be paid on an hourly basis, rather than by the case; (b) be provided with a specific list of disqualifying disorders, and, in the case of rejection, state the diagnosis and grounds for it (i.e. whether from test results, background check, polygraph, or clinical examination). It was also recommended that the candidate be given a form on which to indicate whether he/she was treated fairly in the interview.

**\*9** The key issue with respect to psychiatric screening centers around whether all candidates should be interviewed, or whether equal resources should be concentrated on half the candidate group whose MMPI scores show even small signs of risk in terms of psychological adjustment. Given the low reliability and validity of psychiatric interviews, two independent interviews by psychiatrists appear to be a wise choice for all candidates showing some possible risk. Further, any candidate rejected by a single psychiatrist should have the right to a second, independent opinion. If sufficient economic resources are available, and an increase in load will not detract from the quality of all psychiatric interviews, "low risk" candidates could also routinely be interviewed as part of the screening process. With limited resources, it does appear best to concentrate efforts on the higher risk group of applicants. The recommendations below are built on these premises.

## *II. Specific Procedures of Psychological-Psychiatric Examinations.*

A. All candidates not previously removed by reason of medical exam, or background examination (evidence of a felony conviction only) are scheduled by the Civil Service Commission to take the MMPI. While the test can be administered in large groups, candidates should have the choice of one of several testing sessions given at different days and different hours during a one- to two-week period.

B. The machine-scorable answer sheets are to be sent for machine scoring and interpretation to one of the standard providers of the service, such as the National Computer System, Minneapolis, Minnesota.

C. On receipt of the computer graded sheets, an examiner in the Civil Service Commission scans the k-corrected T-scores printed out on the profile sheets of each candidate. If any scale except 9 (Ma) has a Tscore of 70 or greater (k-corrected), or if *any pair* of scales totals 120 or greater (except with Ma or k), or if *any scale* plus *either* Ma or k equals 130 or greater, the candidate is assigned for two psychiatric interviews. All other candidates are assigned for a single psychiatric interview. It is essential that careful records of these assignments be retained to allow a follow-up study on the efficiency of the pre-screening process. Candidates assigned for two interviews should be allowed to schedule these on the same afternoon or evening. In the case of double interviews, black candidates should be assigned to one black psychiatrist and female candidates assigned to one female psychiatrist whenever possible. Extenuating circumstances which prevent this race/sex matching should be reported to the Civil Service Commission.

D. Dossiers of candidates (which include all materials from the background check, polygraph test, and MMPI scores) are distributed to the psychiatrist prior to the interview.

E. Based on either the medical examination or the psychiatric interview, the psychiatrist may request a neurological examination including EEG, further medical examination, or additional background information, and may withhold an opinion until the requested information is made available. It is the examining psychiatrist's responsibility to pursue areas in which unresolved deceptions have been indicated by the polygraph examiner and to request, if needed, additional background or medical information to resolve or explain, if possible, such unresolved deception. Psychiatrists should be paid on hourly rather than a per patient rate for their services.

**\*10** F. After each interview, the psychiatrist presents a report of his/her opinions and reasons for acceptance or rejection on psychiatric grounds. In those cases of rejection, opinions must be documented carefully with respect to the source of information used (i.e. interview material, MMPI scores, polygraph results, background results, or combination of these). All examining psychiatrists should have a copy of the American Psychiatric Association Diagnostic and Statistical Manual II available for use in conjunction with these reports. The psychiatrist should also complete the shortened polygraph response form to be used by the Safety Director.

G. General grounds for psychiatric rejection (specific pathologies within each of these general categories can be found in the APA Diagnostic and Statistical Manual):

1. A history or presence of psychosis in the applicant, including schizoid personality. (Included in this category are not only the “functional” psychoses such as schizophrenia or manic depressive illness, but also acute and chronic brain syndromes of disabling extent.)

2. Neurosis of an incapacitating magnitude which will interfere with the carrying out of basic duties of a patrol officer.

3. Psychophysiological disorders of an incapacitating magnitude such as ulcerative colitis, bronchial asthma, severe eczema, migraine headache, and lower back syndrome with a strong psychogenic component.

4. Characterological or personality disorders of an incapacitating extent, including impulse-ridden characteristics, persons lacking adequate superego (conscience) formation who are generally recognized as socio-pathic or antisocial personalities, drug addicts, alcoholics, and persons with perversions.

H. In cases where an initial double interview was scheduled and the recommendations of the two psychiatrists are in disagreement, the two are required to (a) come to a joint decision concerning acceptance or rejection, (b) document the reasons for this joint decision, and (c) enclose this statement *along with* the original interview recommendations.

I. In cases where a single interview is scheduled and the psychiatrist recommends rejection, a second psychiatric interview is scheduled for the candidate. Disagreements in recommendations are handled as above. It should be noted that in all cases, it is the obligation of the psychiatrist(s) to come up with a “psychiatrically acceptable” or “psychiatrically not acceptable” decision, with no intermediate or provisional acceptances. In rare cases of an impasse, a third psychiatric opinion should be obtained.

\*11 J. The CSC shall consider all recommendations for psychiatrist to perform the foregoing psychiatric examinations and evaluation; and the CSC shall prepare a panel of board certified psychiatrists for such services after first verifying the competence of each psychiatrist to serve by consulting with an appropriate medical society or societies.

K. Upon the completion of the psychiatric interview, the original polygraph report (Polygraph Interview Form A) shall be delivered to the office of the Medical Director of the Police Department in a sealed envelope, shall be

separately maintained and no further use thereof shall be made during the appointing process.

## FINAL SCREENING PROCEDURE

*I. Role of Civil Service Commission and Safety Director.* The Safety Director will determine who will and who will not be appointed as basic patrolmen based on the information from the medical, background, and psychological-psychiatric investigation. It is, however, the obligation of the Civil Service Commission to assure that the data used in the screening process is in the form to maximize the likelihood that the process is administered in a neutral manner with respect to race and sex. It is also the obligation of the Civil Service Commission to accumulate adequate records and documentation to provide data suitable for an evaluation of all screening procedures in terms of their validity and their disparate impact. It is therefore essential that all dossiers of candidates who are screened be available for examination by the Civil Service Commission prior to the final selection by the Safety Director and his consultants.

For the sake of efficiency and cost, candidates failing to pass the medical examination or who are disqualified by reason of a ground for absolute rejection will progress no further, subject to their appeal rights. It is recommended that all dossiers will be held for safekeeping by the Safety Department for security reasons, but all dossiers will be available to the Civil Service Commission so that they can be checked for appropriate application of rejection rules. Also, the dossier will be made available to the Civil Service Commission for analysis and data collection.

*II. Responsibility of Safety Director in Final Selection of Candidates.* The Safety Director and his associates have two major responsibilities. The first is to screen out those applicants who, while not showing sufficient cause for rejection at any one step in the screening process, have exhibited a pattern of behavior which can clearly be identified as incompatible with the duties of a Cleveland Police Officer.

The second obligation is to preserve the racial and sexual balance of candidates achieved as a result of the original Civil Service screening examination in their final selection of candidates for the Police Academy. With respect to the first of these issues, it should be noted that all candidates remaining eligible at this point have already been evaluated on background, medical, polygraph, and psychiatric interviews by persons trained to detect broad, persistent patterns of behavior which are likely to



interfere with later job performance as a police officer. It is expected, therefore, that relatively few persons who pass the screening process satisfactorily to this point will be found undesirable for police work.

**\*12** III. *Further Grounds for Rejection of Candidates by the Safety Director.* Listed below are grounds for general rejection, based on job requirements, which may not have been regarded as sufficient for psychiatric rejection or for rejection based on the absolute rejection rules outlined in part II of the Background Investigation section. In essence, each of the following cases is one in which (a) some evidence of difficulty was uncovered in the background investigation, but the evidence alone was not sufficient grounds for absolute rejection, and (b) further supporting evidence of difficulty related to that uncovered during the background check is obtained during the polygraph examination. The rules are designed to reject candidates who have shown a consistent pattern of undesirable behavior through a number of independent behavioral events. Obviously, if an event described during the polygraph interview is one already uncovered during the background examination, it would not represent new or independent evidence of a behavioral problem.

*Note: In each case, there must be some evidence that the undesirable behavior pattern has continued into the candidate's recent past. Normally, this would be interpreted to mean that there is some evidence that the undesirable behavior has occurred during the last two years. The seriousness of the incident should, however, determine whether a longer or shorter interval should be considered. If the Safety Director should choose to reject a candidate for behavior occurring significantly more than two years prior to the time of the polygraph examination, he/she should provide an explanation on the rejection form.*

A. Evidence of repeated violent behavior as indicated by several independent instances reported in the background check and related evidence of other violent behavior.

B. Evidence of repeated use of hard drugs as indicated by one or more instances reported in the background check and related evidence of other occasions of hard drug use obtained during the polygraph examination. *Note: References to marijuana or to amphetamines would not be appropriate evidence of hard drug use.*

C. Continued petty theft or continued misdemeanors as indicated by information on both the background check and by information obtained during the polygraph examination.

D. A composite of unsuitable characteristics. Occasionally, a candidate exhibits a number of characteristics reliably documented which, in combination, produce a pattern judged clearly inappropriate for police work by the Safety Director. The Director may choose to reject, but in these cases, clear and explicit reasons for rejection must be outlined which support the principle that it was based on job relevant characteristics. The above information is to be filled out explicitly on the Safety Director's *Police Candidate Rejection Form*.

## APPEALS

A candidate who is rejected at any phase of the screening procedure may appeal his/her case to allow new information to be added to the positive side and/or remove or reinterpret negative information from his/her file. It is assumed that a candidate rejected early in the screening process (background check or medical examination) will be notified in sufficient time to allow the candidate to re-enter the screening process if the appeal is upheld. The procedure is as follows:

**\*13** A. Appeals are made through the Civil Service Commission.

B. The Police Candidate Rejection Form should be available to the candidate upon request, at least five working days prior to the appeal hearing.

C. Appeals will be heard on a timely basis.

D. Candidates who appeal within a limited time after being notified of rejection would have positions held for them in the event the appeal is upheld.

E. The Civil Service Commission's decision is entered into the candidate's file.

F. Appeals and decisions are kept for later analysis by the Civil Service Commission.

## PROBATIONARY PERIOD

The screening evaluation group strongly recommended that the probationary period be extended, and that this period be used more actively to determine an officer's suitability for further police service. Based on this

recommendation, the Cleveland Police Department has agreed that the period of time spent in the Academy will not be counted as part of the six-month probationary period.

## **SAMPLE FORMS**

### **INSTRUCTIONS ON THE USE OF THE POLYGRAPH FORM**

#### ***PRETEST INTERVIEW***

The polygraph operator begins the session by reading the Polygraph Statement to the candidate. The operator then attempts to establish rapport with the candidate while reviewing the Personal History Statement. The operator then gives the candidate the Polygraph Interview (Form A or other Form using different question order). The operator may aid the candidate by clarifying any question or reviewing the Form with the candidate. On any question on which an admission is made, the operator states "Beside what you have written, have you ever (repeats question on Form)?" *See Polygraph Examination, Sec. II. C. of the Screening Process Report.*

#### ***POLYGRAPH EXAMINATION***

During the actual polygraph examination, the operator asks the same questions in the same order as that presented on the Form completed by the candidate. In accordance with Polygraph Examination, Sec. II. D. of the Screening Process Report, the examiner precedes Question 1 with the pseudo-relevant question "Do you intend to falsify any of your answers during this test?" The response to this question is not recorded. The operator then continues with the questions on the Form. In cases of admission on eight of the questions, the follow-up questions take the form "Beside what you have told me, (repeat question)?" The two questions using a different follow-up question format are presented below:

1. Falsification of the Personal History Statement--the operator may use specific items of PHS (e.g. "Beside what you have told me, did you falsify your employment history, your traffic record, etc.?" )

2. Use of marijuana--operator asks "Beside what you have told me, have you ever used marijuana more than (three times the candidate's previously admitted number of uses) in the last year?"

**\*14** Any new admissions obtained during the actual polygraph examination are entered on the Form by the polygraph operator beneath any statements which the candidate may already have written.

Evidence of deception is indicated by one or two marks in the OE (operator examiner) column next to the appropriate question. The mark (I) indicates evidence of possible deception on initial test, the mark (R) indicates possible deception on the retest.

#### ***BLIND GRADING OF POLYGRAPH RECORD***

Following the polygraph exam, the polygraph record is given to a second examiner for evaluation. At the completion of the evaluation, the examiner enters his/her judgments on the polygraph form, in the E2 (second examiner) column, and initials the form. If no disagreements are found, the record is filed for the psychiatric evaluation. If a discrepancy between examiner judgments is found, a third examiner also evaluates the polygraph record and indicates his/her judgments on the form.

#### ***POLYGRAPH SUMMARY FORM***

Some of the material obtained during the polygraph examination is for psychiatric use only and appropriately is not forwarded to the Safety Director's office. This material includes (a) polygraph examiner's judgments of deception and (b) answers involving incidents occurring before age 16. It is the examining psychiatrist's responsibility both to pursue areas in which possible deceptions have been indicated by the polygraph examiner (the psychiatrist shall request additional background or medical information) and to complete the Polygraph Summary Form, which will be used by the Safety Director for final candidate screening.

#### **STATEMENT TO BE READ TO EVERY CANDIDATE AT THE BEGINNING OF THE POLYGRAPH PRE-TEST SESSION**

### **POLYGRAPH STATEMENT**

This session is one of the steps in the screening procedure for entrance to the Cleveland Police Department. It includes an interview and a polygraph examination, sometimes known as a lie-detector test.

The session is designed to verify some background information about you. Any admission in the course of this examination will not, in itself, automatically constitute grounds for rejection. The results of this session are only one part of the entire screening process, and the final decision is derived from the results of the overall

procedure.

The session will be video-taped for your protection. The tape will not be available to any person within or outside the Cleveland Police Department. It would only be used in a case in which you, yourself, wish to complain to the Civil Service Commission about this polygraph examination. At the end of the time allowed for appeals, the tape will be erased.

### **POLYGRAPH INTERVIEW FORM A (Side 1)**

**INSTRUCTIONS: Read the statement carefully and answer in the space provided below. If your answer to any question is YES, please give all relevant details.**

**Do not write in the space below**

**NAME:** \_\_\_\_\_

**OE    E2    E3**

---

1. Have you ever lied to an employer, a government agency, or to the police?

---

2. Since age 16, have you stolen one or more items or money worth a total of \$50 or more?

---

3. Did you deliberately falsify or leave out anything on any part of your Personal History Statement?

---

4. Have you ever physically attacked or deliberately injured anyone in any way?

---

5. Since age 16, have you used or sold drugs or narcotics except for marijuana?

---

**Polygraph Interview Form A (Side 2)**

**Do not write in the  
space below**

**OE      E2      E3**

---

6. Are you deliberately trying to conceal any possible disqualifying information?

---

7. Did you ever force anyone to engage in sexual activity with you?

---

8. Since age 16, have you ever used or sold marijuana?

---

9. Since age 16, have you personally committed any serious undetected crime?

---

10. Do you have any serious physical defects you are trying to conceal?

---

The answers written above constitute the candidate's verbal and/or written response to each of the questions on this form.

**E2:**

Candidate's Signature: \_\_\_\_\_

Examiner's Signature: \_\_\_\_\_

**E3:**

varying order. Suggested sequences for these additional Forms are given below. Numbers refer to those used on Form A.

**ALTERNATIVE POLYGRAPH INTERVIEW  
FORMS (FORMS B, C, D,**

**\*15** Questions identical to those found on Polygraph Interview Form A are used in forms B, C, and D, but in

**FORM B:**                      Questions 3, 4, 9, 1, 7, 2, 8, 4, 10, 6

FORM C: Questions 10, 9, 4, 6, 8, 7, 1, 5, 2, 3

FORM D: Questions 2, 10, 1, 9, 8, 3, 5, 4, 6, 7

2. \_\_\_ Psychological/psychiatric rejection (Psychiatric Opinion attached)

### **POLYGRAPH SUMMARY FORM**

INSTRUCTIONS: This form is to be completed by the initial psychiatrist interviewing the candidate for the Cleveland Police Department. The form is to be forwarded to the Safety Director along with the psychiatrist's opinion concerning the suitability of the applicant for police service. Please transcribe any relevant detail presented under affirmative answers to the polygraph questions listed below. Polygraph operator's judgments are not to be included on this statement.

1. Physically attacking or deliberately injuring anyone since age 16.
2. Forcing anyone to engage in sexual activity since age 16.
3. Stealing a total of \$50 or more in goods or money since age 16.
4. Selling or using hard drugs or narcotics or selling marijuana since age 16.
5. Committing an undetected crime since age 16.

### **POLICE CANDIDATE REJECTION FORM**

Reason(s) for rejection checked and specific details given at the end of this form.

### ***MEDICAL-PSYCHIATRIC***

1. \_\_\_ Medical rejection (Medical Report attached)

### ***BACKGROUND INVESTIGATION***

3. \_\_\_ Discharge from employment on two or more occasions within the past five years or disciplinary action or discharge on three or more occasions within the past five years.
4. \_\_\_ No high school diploma or equivalent.
5. \_\_\_ Repeated (3 or more) instances of misconduct or disciplinary action while in the military service and/or bad conduct discharge.
6. \_\_\_ Conviction for the following felony: \_\_\_\_\_
7. \_\_\_ Three or more convicted traffic violations involving vehicular accidents in the past five years.
8. \_\_\_ A pattern of violence toward persons appearing in two or more areas of the background investigation: residence check, education or employment history, military history, arrests for crimes of violence against persons.
9. \_\_\_ A high incidence of accidents due to negligence, as evidenced by two or more vehicular accidents in which the applicant admitted his negligence or negligence was established in criminal or civil litigation, or similar history of established negligence in accidents using vehicles or other equipment, as determined in the background examination of employment or military service.
10. \_\_\_ A high incidence of accidents due to negligence, as evidenced by two or more vehicular accidents involving traffic convictions or a similar employment or military history of accidents using vehicles or other equipment.

\*16 11. \_\_\_ Evidence of alcoholism or a serious drinking problem as indicated independently by at least *two* of the following: one intoxication conviction, evidence of poor work history related to alcoholism, report of repeated intoxication or disorderly conduct obtained during the residence check.

12. \_\_\_ Any juvenile felony committed at 15 years or older involving violence against other persons in conjunction with any subsequent evidence of similar behavior patterns uncovered in the residence check or employment, military or educational history.

Police Candidate Rejection Form (Side 2)

***BACKGROUND INVESTIGATION AND  
POLYGRAPH EXAM***

13. \_\_\_ Evidence of repeated violent behavior as indicated by several independent instances reported in the

---

background check and related evidence of other violent behavior.

14. \_\_\_ Evidence of repeated use of hard drugs as indicated by one or more instances reported in the background investigation and related evidence of other occasions of hard drug use obtained during the polygraph examination.

15. \_\_\_ Evidence of continued petty theft or other minor crimes, as indicated by information on both the background check and by information obtained during the polygraph examination.

16. \_\_\_ A composite of unsuitable characteristics which, in combination, produce a pattern of behavior clearly inappropriate for police work.

Description of specific behavior(s) used as grounds for rejection in Item No. 16:

Signature of person completing this form:

Date: