

**HOW CAN SMALL LAW ENFORCEMENT AGENCIES ACHIEVE
ETHNIC AND GENDER DIVERSITY WITHIN THEIR COMMAND
RANKS BY THE YEAR 2006?**

JOURNAL ARTICLE

DANIEL SHINER
SANTA MARIA POLICE DEPARTMENT

COMMAND COLLEGE CLASS XXII
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This Command College Independent Study Project is a FUTURES study of a particular emerging issue in law enforcement. Its purpose is NOT to predict the future but rather to project a number of possible scenarios for strategic planning consideration.

Defining the future differs from analyzing the past because the future has not yet happened. In this project, useful alternatives have been formulated systematically so that the planner can respond to a range of possible future environments.

Managing the future means influencing the future--creating it, constraining it, adapting to it. A futures study points the way.

The views and conclusions expressed in the Command College project are those of the author and are not necessarily those of the Commission on Peace Officer Standards and Training (POST).

INDEPENDENT STUDY PROJECT

JOURNAL ARTICLE

Command College Class 22

DANIEL L. SHINER

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INTRODUCTION

As a practicing law enforcement executive, the author brings to this study, first-hand experience in the areas of municipal hiring practices, politics, community dynamics and affirmative action. Sensing growing concern over issues of equal opportunity within the rank structures of law enforcement agencies, he has taken the opportunity to capitalize on the Command College experience to conduct additional inquiry and research on the subject.

The journal article is intended to peak reader curiosity and to highlight the most noteworthy findings of the research. One area of questionable stability was noted which brought rise to the conjecture that the article might be more appropriately titled, "WILL THE ROAD TO ETHNIC AND GENDER DIVERSITY WITHIN ALL RANKS OF YOUR LAW ENFORCEMENT AGENCY TAKE AN UNEXPECTED TURN!"

The body of this article will present the genesis of the focal issue, the product of the research and the processes that led to the development of a strategy and strategic plan which address the principal question. In summary, the article is intended to provide members of small law enforcement agencies with another view of the path leading to organizational diversity, and develop in all readers an enhanced appreciation for an emerging critical issue which may have been underestimated.

BACKGROUND

Nearly three decades ago, a presidential commission studying law enforcement and the justice system, recommended that urgent steps be undertaken to bring diversity to the nation's policing institutions.¹ Despite that guidance, subsequent litigation, consent decrees and a breadth of follow up studies, an American Civil Liberties Union of Southern California (ACLU) 1994 report concluded that an alarming number of California's law enforcement agencies have failed to create within themselves, representative diversity to match that of their respective communities.² Of greater significance is the conclusion reached in the same public report stating, "Policing in Southern California remains, overwhelmingly, a profession of white males, with white men virtually controlling the command level ranks of the region's police services. Exceptions are very few."³

The legal impetus for bringing diversity to all levels of the work force rests with the Equal Employment Opportunity Act of 1964, as significantly revised in 1972. This legislation prohibits discrimination in personnel practices including hiring, firing, compensation and promotion.⁴ Dr. Susan Braunstein, author of the article “Building a More Ethical Police Department”, and an authority on diversity, points out that the moral and professional obligation for bringing diversity to all levels of the law enforcement establishment is a function of each organization’s ethics and leadership.⁵ Therefore, achieving ethnic and gender diversity at all levels of a law enforcement organization may be viewed as legally, morally and ethically mandatory.

The significance of this issue has been further validated by the fact that many law enforcement executives openly acknowledge the absence of representative diversity within the command ranks of California’s law enforcement agencies. The topic of diversity has been the subject of earlier Command College research (1993), though, little data was found concerning diversity in agencies staffed with fewer than 250 sworn officers.⁶

The absence of such information led to a directed survey of twelve diverse law enforcement executives representing a cross-section of municipal policing agencies from Southern to Northern California. Specific effort was made to determine the views of this group of contemporary law enforcement executives as they relate to the issue of bringing diversity to the command ranks of law enforcement agencies staffed with fewer than 150 sworn officers. The details of this survey are

available in Chapter I of the author's Command College Technical Report, which may be obtained by contacting the California Commission for Peace Officer Standards and Training, 1601 Alhambra Blvd., Sacramento, CA 95816-7083.

During the survey, participants agreed that achieving ethnic and gender diversity within the command ranks of smaller departments would be more difficult than in larger ones. The group expressed the belief that it was important for law enforcement agencies to address the issue before being compelled to do so by court order or other mandate. They also shared a common view that the issue of diversity at the command level of small law enforcement agencies could become an area of emerging significance; however, they believed that their own agency's efforts to ensure equal opportunity would withstand any outside scrutiny. Special note was made of the consideration that should be given to both the internal and external anti-affirmative action sentiment that plays such a significant role in society, and its pivotal role in the analysis of the primary issue.

RESEARCH PROCESSES

Media Scanning

Two significant events, heavily covered by a wide spectrum of the media, added measurably to the complexity of the principal issue. The first was the well publicized and highly criticized U.S.

Supreme Court ruling on a State of Colorado Superior Court case, Adarant Constructors Inc. v. Pena.⁷ In its decision, the Court ruled that federal affirmative-action programs must be narrowly tailored to remedy specific patterns of discrimination. In this case, the small Adarant Constructors, Inc., charged that a U.S. Transportation Department program gave prime contractors bonuses for hiring small, disadvantaged businesses as subcontractors, and in so doing, discriminated against white-owned firms. While the decision did not rule any federal program unconstitutional, the Justice Department has outlined a framework under which agencies might justify decisions concerning future applications of federal affirmative-action programs. The natural extension of this monumental decision progresses to the areas of race and gender hirings, terminations and promotions. Another related case which further erodes previous interpretations of the Equal Employment Opportunity Act and subsequent case law is Metro Broadcasting Inc. v. FCC. In this case, governmentally imposed racial hiring preferences were set aside.⁸

The second significant event was California Governor Pete Wilson's 1995 Executive Order W-124-95, which repeals previous Executive Orders R-34-71 and D-20-83 and precludes "race- and gender-based preferential treatment programs which benefit an individual who has not suffered discrimination at the expense of an individual who has not engaged in discrimination".⁹ The order's most compelling paragraphs are as follows:

- (a) "Eliminate all state preferential treatment requirements that exceed federal statutory regulatory, or state statutory requirements, including but not limited to those concerning hiring and layoffs and state contractors or grantees;"

- (b) “Terminate any consultant contracts, disband any advisory committees, and abolish any performance recognition awards where those contracts, advisory committees, and recognition awards foster or encourage preferential treatment;”¹⁰

The Executive Order was preceded by Governor Wilson’s open letter to the public, dated May 31, 1995, which outlined his proposed California Civil Rights Initiative (CCRI). The letter profiled the Governor's intended course of action which is directed at eliminating what he and his supporters view as race and gender based preferential treatment.¹¹

These previously described events were followed by the University of California’s Board of Regents July 21, 1995 decision to remove preferential treatment as it relates to student admissions and hiring of faculty. The Regents enacted a phased elimination of the preferential process.¹²

Literature

An abundance of written material was located that shed additional light on the topic under discussion. If not the most controversial literary source, certainly one of the most timely publications was the American Civil Liberties Union of Southern California’s report concerning racial and gender integration in police and fire departments dated October 1994.¹³

Not surprisingly, the report reached markedly critical conclusions. Again, not surprisingly, the report offers up an equal number of simplistic and somewhat caustic recommendations. Without editorializing further, one is left to ponder the last and final recommendation of the ACLU's report:

“City and county governments must recognize that the individual police or fire chief is the most critical individual in achieving integration in a public safety agency. City councils and county boards should hold individual chiefs personally responsible for the diversity performance of their departments. Failure to set and attain reasonable diversity goals should be grounds for termination of a chief unwilling or unable to perform acceptably.”¹⁴

Additionally, a wide array of publications set forth the need and justification for diversity in the workplace. That same literature identified the necessity for having ethnic and gender diversity in the work place, including the upper organizational structure of policing agencies.¹⁵ Specific mention was made that similar diversity must be reflected throughout the ranks. The extensive and thorough work of Ronald Turner, author of “The Past and Future of Affirmative Action”, was found to provide the most cogent overview of past and present legal issues surrounding affirmative action. In his guide and analysis for human resource professionals and corporate counsels, he has provided substantive legal guidance for 1990s law enforcement executives.¹⁶

The cited publication revisits past legislative and judicial interventions. These interventions include individual state legislative ventures and court interpretations that support affirmative action remedies, and in some instances block them. It carefully moves the reader to an analysis of the Supreme Court’s affirmative action decisions and offers guidance to those individuals that must now tread in that arena. Clearly, the Supreme Court decisions appear to favor plans for intervention that have specific goals and time lines.¹⁷

A wide-spectrum of publications and personnel journals leaning toward private industry's challenges was also located. Of particular note was a Hudson Institute study, *Workforce 2000*.¹⁸ In this study, the researchers assessed the emerging challenge of the American labor market, the financial implications and dramatically different pool of human resources. The study acknowledged the shrinking of the traditional work force and envisioned a new work force comprised of women, minorities, the economically disadvantaged and disabled. Each of these new categories of worker will necessarily have to be assimilated into organizations at all levels. The study suggests that the most successful companies will be those that aggressively meet their challenge with creativity. While the public sector job market was not discussed, the principal points have direct applicability to the topic of this research project.

Contained within one of the more thought-provoking articles was a reminder that public and private organizations are dynamic and do not exist in a vacuum. What transpires in society, communities, the courts and legislative bodies, profoundly affects them in a variety of internal and external ways.

Today's law enforcement agencies, regardless of their size, are similarly influenced by both internal and external change. Changing community demographics, cultural and social norms, the economy, regulation, crime and labor issues are but a few of the more prominent forces steering law enforcement's course.¹⁹

Expert Interviews

In an effort to gain greater insight into the chief issue, personal interviews were conducted with three unique “PRACADEMICIANS”, a term coined by Professor Arnold Guynn, Golden Gate University, during a 1988 lecture series. And, for reader reference, “Pracademicians” are described as academicians that have extensive operational experience in the area they instruct or lecture on.

The individuals interviewed included a Hispanic city councilperson who is a former police chief, a female government personnel specialist who has also served as an Affirmative Action Officer, and a well-known Orange County Attorney who is noted for representing governmental entities in matters which include the hiring and promotion of protected classes. While they have very diverse political views and personal histories, they were generally united in their observations and forecasts concerning the issue of workforce diversity.

Each of these experts voiced concern over preferential hiring and promotional strategies. They shared a belief in the notion that individuals should be given equal opportunity in the hiring and promotional process, that is based upon their attributes and abilities. They also believed that employment and promotion based solely on gender or ethnicity must be avoided at all cost. As they expressed their opinions, they also made it clear that they viewed language skills and cultural diversity as characteristics which may enhance an individual’s ability to provide service;

characteristics on an experience level much like military veteran status or other traditionally recognized employee attributes.

In summary, the practitioners believe that employers will continue to be challenged by legislative changes, court decisions and social pressure. Hiring and promotional practices, not to mention the topic of representative diversity, will become more complex and the subject of frequent debate and controversy. Two of the three pracademicians saw the issue of gender equity becoming more sensitive and demanding than the factors of race or ethnicity. More detailed information concerning these interviews is available in Chapter II of the author's technical report.

Group Analysis

In order to examine the issue, a diverse group of ten individuals met to brain-storm and participate in academic processes which led to analysis of the subject issue. These individuals were representative of society in terms of their age, gender, ethnicity and employment situation. They included public employees, representatives of the criminal justice system, law enforcement, attorneys, private citizens and community activists. Professionally, the group included four law enforcement officials, three attorneys, one judge, one accountant and one family and marriage counselor. Further details on the participants and the academic process they participated in are available in Chapter II of the author's technical report.

The product of the group's work included forecasts of future events and assessment of existing and continuing trends which relate to the primary issue. An example of an event is, "passage of the California Civil Rights Initiative." An example of a trend is, "the U.S. Supreme Court continues to interpret Affirmative Action Laws". These occurrences were developed by individuals that share an understanding of the topic and a grasp of past and current events. The compiled trends and events were prioritized and narrowed down to a manageable number which could then be assigned timelines and analyzed in terms of their impact on the subject issue. While the process is admittedly based on inexact forecasting, it is informed speculation which lends itself to the development of planning and strategizing.

The importance of this explanation rests with the fact that the findings and suggested strategies were developed as a result of input from a diverse group of knowledgeable individuals. This segment of the article formally memorializes the existence and use of an identifiable process from which the information in this journal article was developed.

Aside from their participation in an extensive academic exercise, the participants were interviewed regarding their assumptions and beliefs concerning the research subject. Of striking interest were the feelings of the female participants, particularly in light of their own personal and professional successes as will be outlined below.

Research Results

The futures study contained data that repeatedly affirmed a consensus belief that smaller law enforcement agencies, unlike the larger departments, have fewer promotions, fewer promotional candidates and face greater challenges when attempting to bring ethnic and gender diversity to their command structures. According to data obtained from the California State Commission for Peace Officer Standards and Training, of the 354 municipal law enforcement agencies in California, 323 are staffed with fewer than 150 personnel. These agencies represent seventy one percent of the municipal police departments in the State and may be viewed as benefactors of this, and prior, research on the subject matter.²⁰

The data collected during the research process clearly indicates there is a compelling need to ensure that organizations are staffed, at all levels, with personnel representative of the communities they serve. The literature, legal decisions and opinions of knowledgeable practitioners further reinforce the need for ethnic and gender diversity. The most current assessment, the work of the ACLU, provides glaring proof that law enforcement agencies, particularly those in Southern California, continue to be staffed and managed by white males. The onus is being placed on California's law enforcement executives to ensure that remedies are considered, developed and implemented.

The most significant finding was the issue of gender equity and the resultant fervor of the sentiment harbored by professional women consulted during the research project. Clearly, this is an issue

worthy of greater consideration and possibly of greater consequence. According to *Future Scan*, a noted futurist periodical, women are expected to represent fifty one percent of the population by the turn of the century. While racial and ethnic diversity have been visibly at the heart of law enforcement related Civil Rights and Affirmative Action litigation, the absence of females in law enforcement, particularly at the command level, may become more compelling than the issues of race or ethnicity. The sentiment concerning gender equity was unquestionably passionate. However, despite the implication that preferential treatment might be necessary to remedy the perceived inequity, a clear majority of those who participated in the research process believed that primary emphasis should be given to allowing everyone to compete for positions on an equal basis (equal opportunity) and that selections be made in a fair and impartial manner (best person for the job).

The final finding lies with the observation that all policing organizations must plan for and deal with the issue of workforce diversity. This need will be more challenging in smaller law enforcement agencies. With proper analysis, planning and implementation, these same agencies will bring needed diversity to all levels of their organizations and as a result, will enjoy greater levels of community support and operational effectiveness.

STRATEGY DEVELOPMENT

Strategies were developed through additional academic processes. Many of the previously cited research participants, in concert with a number of the author's peers and subordinates, assisted in analyzing a fictitious community's environment. The process analyzed the social, technical, economic, environmental and political dimensions of a mythical community, including its governmental infrastructure and law enforcement service provider. Key to the analysis was identification of important stakeholders.

These stakeholders were individuals or groups that could impact any strategic plan, those who care about the plan or those that may be affected by the plan. Stakeholders identified in the academic exercise included the City Manager, National Organization of Women, Peace Officers' Association and others. Also considered were individuals or groups that could radically impact the strategies or plans, but who are not always obvious as such. These types of stakeholders are commonly referred to as "Snaildarters" and in the case of the exercise, an adversarial media organization was identified. The process was very revealing and virtually forced participants to carefully analyze the entire environment in which they were suggesting to introduce change.

Following the previously described deliberation, the participants developed a list of potential strategies designed to remedy or otherwise change the level of diversity within a small police department. The list of strategies was narrowed down to a manageable group of viable options through a process which evaluated the strengths, weaknesses, threats and opportunities posed by each of the strategies. These strategies were also evaluated in relation to assumptions which were drawn that might reasonably reflect the desires and concerns of stakeholders as they relate to the primary issue. This extensive operation brought focus on the issue and facilitated the development of a series of steps designed to move this mythical community's police department from the current situation or setting to the presumably more desirable future situation or setting. More detailed information concerning the processes and the product are available in Chapter III of the author's technical report.

In the case study of the mythical police department utilized as the target organization, the consultants fashioned a list of strategies designed to achieve the desired change. These strategies are described as follows:

- The Chief would publicly acknowledge the value and need for work force diversity.
- The Chief would assume a leadership role in establishing an aggressive recruitment program which encourages women and minorities to apply.

- Collectively, members of the department would develop and institute a comprehensive career development program which prepares all employees for promotional opportunity.

These strategies have linkages which suggest they should be considered as sub-strategies or prongs that are essential to the success of a larger single strategy. In this vein, the community and the department must receive the Chief's commitment to workforce diversity. The public acknowledgement will provide necessary executive level leadership which is necessary for success.

The department must then aggressively recruit females and minorities, even if this effort requires reaching beyond the normal geographic boundaries for recruiting. Finally, the Chief must work with all members of the department to fashion a career development program that ensures that all facets of the organization have the benefit of workforce diversity and that those individuals are afforded an opportunity to enhance their professional skills. All members of the department would receive department-sponsored training to prepare them for the next level of responsibility and areas for personal enrichment and improvement would be identified. All employees would then be given the opportunity to compete on an equal basis for promotion to higher ranks.

From the positive perspective, this multi-pronged strategy would be well received by each of the stakeholders. Employee union(s) would play an integral role in developing and implementing the strategy, and under-represented employee groups would see immediate action being taken. The various minority communities would see positive steps being taken and sense the internal

satisfaction which would come from all employees being given the opportunity to prepare themselves on an equal basis. Local government and civic leaders, not to mention groups such as the ACLU, are likely to see this strategy in a very positive light. The department would be able to work with and within the community more effectively. Over time, workforce diversity would be realized, as would employee satisfaction, as emphasis is placed on equal opportunity to compete, and promotion would be based on the merit of being the “most professionally qualified”.

From a critical perspective, critics including under-represented employees and members of the minority community may complain that enough is not being done soon enough. There is no guarantee that a female or member of an under-represented minority group will be promoted to the command level. Critics could capitalize on this possible flaw.

In the final analysis, the ethos of this strategy must be fashioned in a manner that reflects the organization’s mission and value statements. The strategy, itself, demonstrates a sincere commitment to bringing diversity to the department’s workforce. This diversity is designed to gain the confidence of the community, as well as local government and department employees by providing paths for career development, personal enrichment and opportunity to participate in promotional processes on an equal basis with other employees.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

The evidence is clear; previous studies and contemporary literature support the notion that California's law enforcement agencies have failed to bring needed diversity to their ranks. Practitioners have acknowledged this failure and appear to have similar opinions regarding their future obligations in this area. Modern day law enforcement executives agree that diversity is necessary and that reasonable efforts must be made to address this need. The question of how diversity is achieved remains at the heart of the issue.

The suggested strategies, or strategy, as envisioned by the participants in the array of academic processes, appear to have a great deal of merit. The development and introduction of systemic changes that are designed to ensure that all employees are afforded fair and equal opportunity for employment and promotions appeals to nearly everyone. While the suggested solution admittedly takes more time, adverse impacts are minimized and many pitfalls are avoided.

The solution developed for the “mythical” police department may be applicable to any law enforcement agency in California. The strategy provides smaller organizations with a functional plan that will foster strong community support and sound organizational development. As

indicated in Chapter IV of the author's technical report, the suggested strategy must be utilized in concert with an appropriate Transition Management Plan. Development of this plan must be preceded by careful analysis of the primary stakeholders and thoughtful evaluation of the methodologies available to bring individuals or groups to a position which supports implementation of the strategy. The plan then moves the organization from the "present state" to the desired "future state".

Recommendations

Transitioning an organization from the "present" state to a more desirable "future" state requires appropriate research, consideration and planning. While the facets of individualized strategies will necessarily vary, the recommendations that will follow would appear to have some level of applicability to nearly all organizations. The specifics of the processes leading to agency-specific strategies are discussed in greater detail through the various chapters of the author's technical report. Recommendations include:

- Comprehensive agency-specific analysis must be conducted.
- A strategic plan must be developed. For example, as identified on page 15 of this article:
 - * The Chief publicly acknowledges the value and need for work force diversity.
 - * The Chief assumes a leadership role in establishing an aggressive recruitment program; encouraging women and minorities to apply.
 - * Members of the department develop and institute a comprehensive career development program; preparing all employees for promotional opportunity.
- A transition management plan must be developed.

- The Chief of Police must publicly announce his/her commitment to, and support for, bringing resolution to the issue of diversity.
- An internal and external communications campaign must be implemented.
- A transition management team must be charged with the responsibility to effect change.
- Systemic changes, such as hiring and promotional processes, must be appropriately modified and implemented.
- Periodic evaluation must occur, accompanied by any necessary modification.

Failure to give appropriate consideration to the issues of ethnic and gender diversity within one's own organization may spawn unpleasant consequences. The author urges today's professional law enforcement managers to prepare for the future - NOW!

ENDNOTES

¹ President's Commission on Law Enforcement and Administration of Justice. February 1967. The Challenge of Crime in a Free Society. Washington, D.C.: Government Printing Office, page 107.

² American Civil Liberties Union of Southern California Report. October 1994. Of the Community and for The Community: Racial and Gender Integration in Southern California Police and Fire Departments. ACLU, Los Angeles, California, Page II.

³ Ibid, Page II

⁴ Title 42, United States Government Code, Chapter 7. Civil Rights Act of 1964, Government Printing Office, Washington D.C., 1990 Edition, Pages 72-73

⁶ Braunstein, Susan, Dr. Building a More Ethical Police Department. The Police Chief, January 1992.

⁷ Adarand Constructors Inc. v. Pena, No. 93-1841. 115 S.Ct. 2097, June 12, 1995.

⁸ Metro Broadcasting Inc. v. FCC, 497 U.S. 547, 58 LW 5053 (1990).

⁹ Governor Pete Wilson. Executive Department State of California, Executive Order W-124-95, Executive Order To End Preferential Treatment And To Promote Individual Opportunity Based On Merit. Sacramento, California, June 1, 1995, Page 1.

¹⁰ Ibid, Page 2.

¹¹ Governor Pete Wilson. Open Letter To Public On Affirmative Action. Sacramento, California, May 31, 1995.

¹² Santa Maria Times. Regents, Backed By Wilson, Drop Policy. Santa Maria, California, July 21, 1995, Page 1.

¹³ American Civil Liberties Union of Southern California. Of the Community and for the Community: Racial and Gender Integration in Southern California Police and Fire Departments. ACLU, Los Angeles, California, October 1994, Pages 57-62.

¹⁴ Ibid, Page V.

¹⁵ Hudson Institute. September 1988. Prepared for Employment Standards Administration, U.S. Department of Labor. Opportunity 2000, Creative Affirmative Action Strategies For a Changing Workforce. Indianapolis, Indiana.

¹⁶ Turner, Ronald. The Past and Future of Affirmative Action. Quorum Books, Westport, CT., 1990.

¹⁷ Ibid, Pages 70-71.

¹⁸ Johnston, William B. and Packer, Arnold H. Workforce 2000. Hudson Institute, Indianapolis, IN, 1987.

¹⁹ Matzer, John Jr., Personnel Practices for the '90s; A Local Government Guide. Practical Management Series. Washington, D.C., International City Management Association, 1991.

²⁰ Commission on Peace Officer Standards and Training. December 1995. Employment Data For California Law Enforcement 1995/96. POST Media Distribution Center, Sacramento, California.