

**RESPONDENT
CITY OF NORTH MIAMI'S**

POSITION STATEMENT

**EEOC CHARGE NO.
510-2016-05106**

**RESPONDENT'S (CITY OF NORTH MIAMI)
POSITION STATEMENT**

EEOC CHARGE NO.: 510-2016-05106

BACKGROUND

On or about August 22, 2016, Charging Party, Patrick McNally, a police sergeant with the City of North Miami, ("City") filed a charge of discrimination in Charge No. 510-2016-05106, alleging race discrimination in violation of Title VII of the Federal Civil Rights Act.

Specifically, the Charging Party ("CP") alleges that he was passed over for a promotion to the position of police commander in favor of other candidates due to his race (white). The CP states that the promotions were not made on the basis of merit or performance and that the positions were filled with lesser qualified candidates.

The CP was initially hired by the City on February 22, 1993 as a part-time recreation leader I with the City's Parks and Recreation Department. The CP became a full-time employee with the City on July 9, 1995 when he was promoted to the position of police officer trainee. After graduating from the police academy, CP became a police officer on January 9, 1996. On September 2, 2012, CP was promoted to the position of police sergeant and remains in this position to date. As reflected above, the CP has had a rewarding career with the City and opportunities for advancement while employed with the City.

On June 26, 2016, North Miami's Police Chief made several promotional appointments as documented in the memorandum attached as (Ex. 1). CP alleges that he was passed over for a promotion to the police commander position due to racial discrimination. Specifically, he states that the candidates who were promoted were Hispanic, Haitian and African Americans and have less experience than CP. He alleges that the Police Chief has made statements about wanting the department to "mirror the community" and states that the Department has a history of discrimination against whites in promotions.

The City of North Miami Police Department (“Department”) protects and serves the residents of the municipality and has approximately 118 sworn police officers in the department. An integral part of the Department’s mission is to maintain a safe and professional work environment, completely free of discrimination, harassment and retaliation. Every employee is aware that the City has an absolute ZERO TOLERANCE for any harassment or discrimination. Any and all allegations of same are investigated thoroughly.

In regard to the CP’s allegation of discrimination, the City vehemently denies any and all allegations by the CP for the reasons set forth below.

DISCRIMINATION

THE CHARGING PARTY ALLEGES THAT HE WAS PASSED OVER FOR A PROMOTION TO THE POSITION OF POLICE COMMANDER ON THE BASIS OF RACE.

Title VII of the Civil Rights Act prohibits employers from discriminating on the basis of an individual’s “race, color, religion, sex or national origin.” 42 U.S.C. §2000e-c(a). The Supreme Court has set forth the following burden of proof which must be met by a Title VII plaintiff in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817 L.Ed.2d 668 (1973): The complainant must carry the initial burden of establishing a prima facie case of discrimination. This may be done by showing (1) that he belongs to a protected class; (2) that he applied and was qualified for a job for which the employer was seeking applicants; (3) that, despite his qualifications, he was rejected; and (4) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant’s qualifications. After the complainant satisfies this burden, the burden shifts to the employer to articulate some legitimate nondiscriminatory reason for the employee’s rejection. Disparate impact, in contrast, involves “facially neutral employment practices that have significant adverse effects on protected groups . . . without proof that the employer adopted those practices with a discriminatory intent The evidence in these ‘disparate impact’

cases usually focuses on statistical disparities, rather than specific incidents, and on competing explanations for those disparities.” *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 986-87, 108 S.Ct. 2777, 101 L.Ed.2d 827 (1988).

For several reasons, the CP’s claim must fail. First, the CP has not set forth any evidence that he was denied the promotion because he is white. Generally courts have described direct evidence of discrimination as information that proves the existence of a fact in issue without inference or presumptions. Such evidence generally relates to the actions, statements, or biases of the defendant’s decision-maker. *Schweiftfager v. Boynton Beach*, 42 F.Supp. 2d 1347, 1356 (S.D. Fla. 1999). Where evidence is, by inference, subject to multiple meanings, it is not direct evidence *Id* at 1357. Moreover, the law is well settled that to sustain this burden the complainant must present concrete evidence in the form of specific facts, not just conclusory allegations and assertions. See *Earley v. Champion International Corporation*, 907 F.2d 1077, 1081 (11th Circ. 1990). In this case, the CP claims that the Police Chief has made racially motivated comments in regard to police promotions, but fails to give specific details such as names of witnesses to the statements, links to the Youtube video, etc. CP’s contention that he was discriminated against without any evidence substantiating the claim is fatally flawed.

Secondly, appointments to executive command staff positions within the Department have historically been made at the discretion of the Police Chief. In the organizational structure of the Department, police officer and police sergeant positions are classified union positions that are filled through a competitive selection process which include written examinations, skills testing and consideration of seniority status. Executive command staff positions, which are exempt from union status and the City’s civil service rules, include the positions of: police commander, police major, assistant chief and chief. These positions are filled at the discretion of the Chief of Police who may consider employees of the Department as well as candidates from outside law enforcement agencies.

It is customary for newly sworn police chiefs to make changes to their executive command staff. In this instance, Chief Eugene was recently appointed police chief and as a result, made changes to the structure of the executive leadership of the Department as well as several promotional appointments due to the reorganization. Contrary to the allegations set forth by CP, it is apparent from the list of appointments (Ex. 1) that the promoted employees comprise of multiple ethnicities, races and genders (Ex. 2). In direct contravention to the claim that the Department discriminates against whites in promotions, Chief Eugene appointed two (2) white males to the position of assistant chief and promoted a white female to the position of police sergeant. In looking at the backgrounds of the newly promoted employees, they include almost every nationality reflected within the Department. The recent promotions should be encouraging to all employees because opportunities for advancement were given to two (2) white males, a white female, a black female, two (2) black males and one (1) hispanic male.

Additionally, the City rejects the CP's claim that the selected candidates were less qualified for the position of police commander. At the time of the promotions, CP was one of fifteen (15) police sergeants who could have been appointed to two (2) available police commander positions on the Chief's executive staff. In analyzing CP's claim that the selected candidates had less experience, it must be noted that they became police sergeants at the same time as CP (Ex. 3). As such, the selected candidates had the same amount of police sergeant experience as CP, but also had unique skill sets and abilities due to their various assignments and roles within the Department, i.e. Special Weapons and Tactics (SWAT), community policing, internal affairs, special investigations, etc. Specifically, Commander Estrugo had experience in the patrol unit, investigations unit, internal affairs and served as the Department's public information officer while assigned to administrative unit. Commander Hollant has served in the patrol unit, Community Oriented Policing (COPS) unit, investigations unit, special victims unit and is fluent in French, Spanish and Creole. Commander Brinson had experience in the Department's patrol unit, investigations unit, SWAT team, Honor

Guard and has served as the City's Emergency Manager since 2015. While CP has an equal amount of years of experience as the other candidates as a police sergeant, he has spent the large majority of his police career in the traffic and patrol unit. As such, CP's claim that he is more experienced than the selected candidates must be rejected.

The evidence simply does not reflect any motivation by the Department to make promotional appointments on the basis of race. While the CP was not promoted in the most recent round of appointments, he is still an eligible candidate for future promotional opportunities. As stated in his charge of discrimination, he is an excellent employee with years of tenure who has been given several opportunities to advance with the City during his career and who will continue to have opportunities to advance with the City.

Finally, CP is unable to establish a prima facie case of discrimination as the Department did not reject him for the position of police commander on the basis of race and has not continued to seek other, lesser qualified, candidates for the position. Even if the CP were able to establish a prima facie case of discrimination, the City is able to offer several legitimate nondiscriminatory reasons for its actions. The Department is committed to establishing and maintaining a diverse workforce in which employees are free from any discrimination or harassment based upon their age, gender, ethnicity, race, or national origin. To that end, the Department utilizes fair and non-discriminatory criteria in selecting its employees for hiring and promotion. CP alleges that whites are discriminated against by the Department and in support of this allegation, he points to statements made by the Chief that the Department should mirror the community which is primarily Haitian and Hispanic. However, CP fails to set forth any evidence to support the veracity of this claim such as names of witnesses or even a link to the video he refers to in his Charge of Discrimination.

Furthermore, the City denies that the Chief's comment is a racially motivated sentiment. In fact, the EEOC in conjunction with the DOJ have endorsed the philosophy of having a diverse law enforcement agency which reflects the community as reflected in the recent publication entitled

“Diversity in Law Enforcement: A Literature Review” attached as (Ex. 4). According to the publication “any consideration of policing effectiveness is incomplete without attention to who our police officers are, as well as whether the police force reflects the community that its officers are sworn to serve.” The City of North Miami is the sixth largest municipality in Miami-Dade County with a population of 60,000. According to the latest census data, the racial breakdown of the community comprises of 59% Black, 11% White, 28% Hispanic and 2% Asian. As reflected in the statistical data, the large majority of the population in North Miami consists of Black African Americans, particularly of Haitian American descent. The second largest group in this community are Hispanics. It should be viewed as a positive sentiment that the two largest demographic groups in this community were reflected in the most recent round of police promotions (3 blacks and 1 hispanic). The City vehemently denies CP’s allegation that whites within the department have been discriminated against in order to facilitate the promotion of minority candidates within the Department as three (3) whites were also promoted at the same time as the minority candidates in the most recent round of promotions. Further, in looking at the make-up of the overall Executive Command Staff subsequent to the promotions (5 whites, 4 blacks, 4 hispanics) the leadership of the Department is diverse and equally representative of all races and also serves as an excellent reflection of the community it serves (See Organization Chart attached as Ex. 5). This is a proud achievement for the City because in today’s world of law enforcement so many police departments have severe mismatches between the composition of the police force and the demographics of the community at large; see (Ex. 4).

Simply put, the evidence supports the fact that the CP’s claims of discrimination are without merit as there is no evidence that the CP was passed over for a promotion in favor of minority candidates. While the selected police commanders are hispanic and black, and CP is white, the evidence confirms that the selected candidates had significantly more experience in several specialized areas of law enforcement while CP has worked in the same unit for the majority of his

police career. The City's decision to promote minority candidates does not constitute a violation of Title VII in and of itself. Especially where the City also promoted white candidates at the same time. The CP has failed to present any additional evidence that the City had any discriminatory intent in making this decision. As such, the Charging Party's claim of discrimination must fail as a matter of law.

Conclusion

The EEOC should deny the discrimination claim filed by the Charging Party, Patrick McNally, as he has not established a prima facie case of discrimination based on race.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
CITY OF NORTH MIAMI
776 N.E. 125th Street
North Miami, FL 33161
Telephone: (305) 895-9810
Facsimile: (305) 895-7029

By: _____

JEFF P. H. CAZEAU, ESQ.

City Attorney

Florida Bar No. 605905

Primary Email: cityattorney@northmiamifl.gov

Secondary Email: jcazeau@northmiamifl.gov

JENNIFER LYNN WARREN, ESQ.

Assistant City Attorney

Florida Bar No. 42834

Primary Email: cityattorney@northmiamifl.gov

Secondary Email: jwarren@northmiamifl.gov

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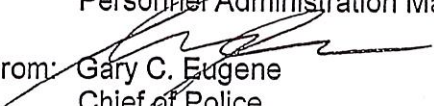
EXHIBIT

“1”



MEMORANDUM

To: Joseph Roglieri
Personnel Administration Manager

From: 
Gary C. Eugene
Chief of Police

Date: June 24, 2016

RE: Promotions

Effective Sunday, June 26, 2016, the following promotions will take place:

- **Major Robert Bage** will be promoted to the rank of Assistant Police Chief. He will be assigned to the Community Services Division. I am requesting that Assistant Chief Bage starts at pay grade 39, step 7.
- **Major Neal Cuevas** will be promoted to the rank of Assistant Police Chief. He will be assigned to the Field Operations Division. I am requesting that Assistant Chief Cuevas starts at pay grade 39, step 7.
- **Commander Timothy Belcher** will be promoted to the rank of Police Major. He will be assigned to the Administrative Section. I am requesting that Major Belcher starts at pay grade 36, step 9.
- **Sergeant Emile Hollant** will be promoted to the rank of Police Commander. He will be assigned to Uniform Patrol. I am requesting that Commander Hollant starts at pay grade 35, step 6.
- **Sergeant Rafael Estrugo** will be promoted to the rank of Police Commander. He will be assigned to Uniform Patrol. I am requesting that Commander Estrugo starts at pay grade 35, step 6.
- **Officer Crystal Thompson** will be promoted to the rank of Sergeant. She will be assigned to the Uniform Patrol Section, Afternoon Shift. I am requesting that Sgt. Thompson starts at pay grade 31S, step 7.
- **Detective Brittany Horn** will be promoted to the rank of Sergeant. She will be assigned to the Uniform Patrol Section, Day Shift. I am requesting that Sgt. Horn starts at pay grade 31S, step 5.

GE:ld

C: Accreditation
Human Resources & Career Development

EXHIBIT

“2”

EMPLOYEE	PREVIOUS TITLE	NEW TITLE	RACE	GENDER
Robert Bage	Police Major	Assistant Chief	White	Male
Neal Cuevas	Police Major	Assistant Chief	White	Male
Timothy Belcher	Police Commander	Police Major	Black	Male
Emile Hollant	Police Sergeant	Police Commander	Black	Male
Rafael Estrugo	Police Sergeant	Police Commander	Hispanic	Male
Crystal Thompson	Police Officer	Police Sergeant	White	Female
Brittany Horn	Police Officer	Police Sergeant	Black	Female

EXHIBIT

“3”

PERSONNEL ADMINISTRATION DEPARTMENT
CITY OF NORTH MIAMI

Certification No: POL#12-2 Date: May 3, 2012

Classification: Police Sergeant Number of Positions: 11

Kind of Examination Promotional Requisition(s) Dated: 7/13/11; 9/1/11; 9/8/11; 1/26/12;
5/1/12; 3/1/12; 9/15/11; 9/22/11;
8/3/11; 8/1/11; 8/23/11

LIST OF ELIGIBLES

ORDER	NAME	EXAM NO.	GRADE	SELECTED BY	DATE SIGNED	EFFECTIVE DATE OF APPOINTMENT
1	ESTRUGO, Rafael	CS-1341-001612	92.94500	H. ELIAS	5-7-12	5-13-12 / 0800
2	BRINSON, Angelo	-001611	91.13000	H. ELIAS	5-7-12	5-13-12 / 0830
3	BLANCHARD, Donald	-001766	90.08143	H. ELIAS	5-7-12	5-13-12 / 0900
4	BELCHER, Timothy	-001777	89.84500	H. ELIAS	5-7-12	5-13-12 / 0930
5	ROMAN, Diana	-001610	88.14500	H. ELIAS	5-7-12	5-13-12 / 1000
6	REYES, Ernesto	-001609	87.20000	H. ELIAS	5-7-12	5-13-12 / 1030
7	ROSEN, David	-000123	87.10500	H. ELIAS	5-7-12	5-13-12 / 1100
8	CARTER, Ransom	-000316	86.39714	H. ELIAS	5-7-12	5-13-12 / 1130
9	RODRIGUEZ, Karel	-000314	85.90643	H. ELIAS	5-7-12	5-13-12 / 1200
10	KISSEL, Joseph	-001757	85.42000	H. ELIAS	5-7-12	5-13-12 / 1230
11	ROSSI, Andrew	-000161	84.05500	H. ELIAS	5-7-12	5-13-12 / 1300
12	McNALLY, Patrick	-000088	83.77500	H. ELIAS	8-23-12	9-2-12 / 0001
13	HOLLANT, Emile Claude	-000181	83.41500			
14	MESIDOR, James	-001651	83.05714			
15	BROOKS, Kessler	-001589	78.18571			

Selection of any five of the indicated eligibles is permissible under the Civil Service Rules ("The Personnel Department shall certify a number of names equal to the number of vacancies to be filled and four more in addition thereto.")

No eligible is to be placed on duty without clearance from the Personnel Administration Department.

The Department Head is to indicate each selection made by affixing his/her signature in the "Selected By" column after the name of the eligible selected, together with the proposed effective date of appointment which must be at least one day later than the "Date Signed."

This certification, properly signed, is to be returned to the Personnel Administration Department.


Personnel Administration Director



EXHIBIT

“4”

DIVERSITY IN LAW ENFORCEMENT: A LITERATURE REVIEW

U.S. Department of Justice
Civil Rights Division
Office of Justice Programs

U.S. Equal Employment
Opportunity Commission



January 2015

Recent events have placed a spotlight on the lack of diversity within police departments and other law enforcement agencies across the nation. After this past summer's events in Ferguson, Missouri, many news organizations focused on the racial demographics of the Ferguson Police Department.ⁱ Although approximately two-thirds of Ferguson, Missouri's residents are African American, only three of the town's fifty-three commissioned police officers are African American.ⁱⁱ Ferguson is far from alone in this regard: there are police departments in every corner of the United States where there are severe mismatches between the racial composition of the police force and the demographics of the community at large.ⁱⁱⁱ

The Department of Justice's Civil Rights Division (CRT) and Office of Justice Programs (OJP) have joined with the Equal Employment Opportunity Commission (EEOC) to respectfully submit the attached literature review. It has been our collective experience that any consideration of policing effectiveness is incomplete without attention to who our police officers are, as well as whether the police force reflects the community that its officers are sworn to serve.^{iv} Although workforce diversity alone may not resolve all issues related to the fairness and effectiveness of policing,^v achieving diversity in law enforcement agencies can increase trust between those agencies and the communities they serve.^{vi} That basic trust can be an essential part of defusing tension, investigating and solving crimes, and creating a system where citizens believe that they can rely on their police departments and receive fair treatment. Indeed, victims and witnesses of crime may not approach or engage with law enforcement officials if they do not perceive them to be responsive to their experiences and concerns. A diverse police department is also less likely to be insular, and therefore can be more receptive to change.

Moreover, a commitment to diversity in hiring and promotion opens crucial public sector jobs to all Americans and helps ensure equal employment opportunity in public safety jobs. These jobs are the backbone of a community: they offer long-term and rewarding careers; bring families into the middle class; and create investment in the community, all of which have a significant positive impact on that community's schools and housing and, indeed, in all other aspects of the American dream.

Lack of diversity in police departments directly implicates some of our nation's most fundamental civil rights laws and protections.^{vii} Title VII of the Civil Rights Act of 1964 (Title VII),^{viii} which is enforced by both the EEOC and CRT, prohibits employment discrimination on the basis of race, sex, color, religion, and national origin. Title VII prohibits intentional discrimination—for example, where a job applicant, despite being qualified for the position, is not hired because of race, sex, or another protected characteristic. Unfortunately, intentional employment discrimination still remains a substantial barrier in the law enforcement context. For example, two years ago CRT's Employment Litigation Section brought a case, which was referred from the EEOC, on behalf of a woman serving as a sergeant at a small police department who had been passed over to be assigned shift commander in favor of a man with less

experience.^{ix} This victim was the only woman who worked at the police department; in fact, twenty-three years earlier she had to bring a lawsuit just to obtain a position with the department. In the most recent case, the sergeant filed another discrimination charge in order to receive equal treatment. As a result of CRT's involvement in the case, she obtained the promotion to shift commander she deserved.

Title VII also prohibits the use of neutral selection practices that fall more heavily on one group unless those practices have been shown to be job related and consistent with business necessity. The Department of Justice, the EEOC, and private plaintiffs have a long history of successfully challenging facially neutral job screening devices—such as height requirements, written tests, or physical tests—that have an adverse impact on protected groups and are not job related or consistent with business necessity. For example, CRT successfully sued a state regarding its written examination for police sergeants; as a result, some of the small communities that use the challenged examination promoted their *first ever* African-American sergeants this year.^x Following an EEOC investigation, CRT also successfully sued the New York City Fire Department regarding its written examination for entry-level hires.^{xi} The *New York Times* chronicled the success of one of the African-American firefighters hired as a result of that lawsuit; at the first fire he fought, he located and helped rescue a five-month-old child.^{xii} For more on the EEOC's work in this area, please see Chair Jenny Yang's written testimony submitted on January 21, 2015, and attached here as Appendix B.

The federal government cannot investigate or litigate every meritorious case of employment discrimination that may exist, especially given that there are nearly 18,000 state and local law enforcement agencies in the United States. The President's Task Force on 21st Century Policing, however, is uniquely situated to highlight the importance of workforce diversity for police departments and other law enforcement agencies. We believe that a crucial component of that message should be identifying barriers that undermine diversity and equal employment opportunity, while also highlighting best practices that departments can use to recruit, hire, and retain qualified and diverse personnel.

We hope that the attached review—which assembles research and academic scholarship that have addressed the issue of diversity in law enforcement—can aid in that process. Although this review is not exhaustive, it is designed to provide a cross-section of relevant information that we hope will be helpful and informative to the Task Force. We present the literature review in four categories:

- **Why Diversity Matters.** Diversity can be a crucial element in establishing and expanding trust between law enforcement and the community. Workforce diversity may also have positive effects on law enforcement agencies; making them less insular and

more receptive to change. In addition, the officers who are hired often reap tremendous benefits that inure to their families and communities.

- **Barriers to Achieving Diversity.** A wide range of barriers may undermine diversity at every stage of the recruiting, hiring, and selection process. There is substantial evidence that these barriers have made it difficult for underrepresented groups (i.e., racial/ethnic minorities, women, and LGBTI individuals) to secure positions in law enforcement.
- **Best Practices for Achieving Diversity.** There are concrete steps law enforcement agencies can take that will result in greater diversity among their personnel. By examining and, when necessary, reforming recruitment, selection, and training efforts, law enforcement agencies can attract and retain highly qualified workforces that better reflect the communities they serve.
- **Characteristics of High Quality Law Enforcement Personnel.** Traditional measures for hiring and training police officers and other law enforcement personnel not only have adverse impact on diversity, but also serve to undermine the ability to attract the most qualified and effective individuals for important public safety jobs. By identifying the factors and skills that are critical to effective law enforcement, police departments and other agencies can design procedures that will attract individuals that are both highly qualified and diverse.

We have also attached, as Appendix A to the review, a list of experts on the issue of workforce diversity in law enforcement with whom the EEOC and the Department of Justice have worked. This list is non-exhaustive; we hope that it can serve as a resource and starting point if the Task Force desires additional perspectives or information about the matters covered in this document and the attached literature review.

ⁱ See, e.g., Bathya Ungar-Sargon, *Lessons for Ferguson in Creating a Diverse Police Department*, FIVETHIRTYEIGHT POLITICS, Jan. 5, 2015, <http://fivethirtyeight.com/features/lessons-for-ferguson-in-creating-a-diverse-police-department/>.

ⁱⁱ Emily Badger, *When Police Departments Don't Look Like the Cities They're Meant to Protect*, WASH. POST, Aug. 12, 2014.

ⁱⁱⁱ See Jeremy Ashkenas and Haeyoun Park, *The Race Gap in America's Police Departments*, N.Y. TIMES, Sept. 4, 2014; see also Emily Badger, Dan Keating, and Kennedy Elliott, *Where Minority Communities Still Have Overwhelmingly White Police*, WASH. POST, Aug. 14, 2014.

^{iv} Issues of diversity were raised repeatedly in the testimony that this Task Force received as part of its listening session on Building Trust and Legitimacy. See, e.g., Written Testimony of Chief Jim Bueermann (ret.), President, Police Foundation ("Every police leader knows of the importance of creating a diverse workforce. Police agencies that do not have a workforce that reflects the community it serves will eventually have to deal with a

heightened level of police-community tension brought on by the lack of police diversity.”); Written Testimony of National Organization of Black Law Enforcement Executives (“The challenge to hiring a diverse workforce in law enforcement is reflected by the faces of the organization’s leadership. The key to diversity in law enforcement is visibility of diversity, opportunity to engage people on their terms, and opportunities to advance.”); Written Testimony of National Association of Women Law Enforcement Executives (“It has been known by us and many others, that in order to best police a certain area, the diversity of a police force should be representative of the community they serve.”).

^v The existing literature is conflicted about the impact demographic diversity has on the manner law enforcement agencies perform their duties. For example, one article surveyed the research with respect to African-American police officers and found evidence to support either side. David A. Sklansky, *Not Your Father’s Police Department: Making Sense of the New Demographics of Law Enforcement*, 96(3) J. CRIM. L. & CRIMINOLOGY 1209, 1224-25 (2006). On the one hand, the article pointed to studies showing that African-American officers were less prejudiced towards other African Americans than white officers, knew more about the African-American community, and got more cooperation from African-American citizens. *Id.* At the same time, the article also highlighted studies concluding that African-American officers were just as likely as their white counterparts to use their firearms, arrest civilians, receive citizen complaints, and be subjected to disciplinary proceedings. *Id.* at 1224. Part of the challenge may stem from the fact that it is very difficult to determine, with any degree of certainty, the role that demographics—for both officers and civilians—have on how law enforcement activities are conducted and perceived. *See id.* at 1225 (“On both sides of this debate, many of the findings are hard to interpret. If, for example, black officers draw more complaints, is that because they act more aggressively, or because they are assigned to tougher beats, or because prejudice makes their assertions of authority seem more objectionable, or because minority citizens feel more comfortable complaining about officers from whom they do not fear retaliation?”).

^{vi} It has been our experience that there is a growing consensus that diversity can be an important element in establishing trust and improving relations between law enforcement and communities. *See generally* Ungar-Sargon, *supra* note i (quoting an interview with Stanford Law Professor David Sklansky who explained: “When the police force integrates and begins to look more like the community it’s policing, it removes one big impediment toward trust. It doesn’t guarantee trust, but it removes one thing that makes it hard to develop trust.”). And in the wake of this summer’s events in Ferguson, Attorney General Eric Holder acknowledged the need to “consider the role that increased diversity can play in helping to build trust within communities.” Press Release, U.S. Dep’t of Justice, Statement by Attorney General Eric Holder on Latest Developments in Ferguson, Missouri (Aug. 14, 2014), <http://www.justice.gov/opa/pr/statement-attorney-general-eric-holder-latest-developments-ferguson-missouri>. Yet, despite the widespread belief that diversity in law enforcement can foster community trust, there has been scant research and, at times, mixed empirical findings regarding the relationship between police diversity and community trust. *See, e.g.,* Joshua C. Cochran and Patricia Y. Warren, *Racial, Ethnic, and Gender Differences in Perceptions of the Police: The Salience of Officer Race Within the Context of Racial Profiling*, 28(2) J. CONTEMP. CRIM. J. 206 (2012) (demonstrating, based on a recent empirical study, that officer race may play a more substantial role in the development of citizens’ perceptions than previous findings would suggest, providing some evidentiary support for diversification as a viable option for improving citizen-officer relations, and calling for further evaluation of diversification policies).

^{vii} To be clear, diversity in law enforcement includes more than just racial and ethnic diversity; it also should involve considerations of sex, national origin, religion, sexual orientation, and gender identity. This literature review focuses on issues of race and ethnicity (and to a lesser extent, sex) in light of the recent attention that has been directed towards these categories. However, all aspects of diversity should be considered when jurisdictions are considering whether their law enforcement agencies are representative and reflective of the communities they serve.

^{viii} 42 U.S.C. § 2000e *et seq.*

^{ix} *See* Press Release, U.S. Dep’t of Justice, Justice Department Settles Sex Discrimination Lawsuit Against the Town of Griffith, Indiana (June 11, 2013), <http://www.justice.gov/opa/pr/justice-department-settles-sex-discrimination-lawsuit-against-town-griffith-indiana>.

^x See Press Release, U.S. Dep't of Justice, Justice Department Settles Allegations of Employment Discrimination in Promotion of Police Sergeants in New Jersey (Aug. 1, 2011), <http://www.justice.gov/opa/pr/justice-department-settles-allegations-employment-discrimination-promotion-police-sergeants>.

^{xi} See Press Release, U.S. Dep't of Justice, Justice Department Reaches Agreement in Principle with the New York City Fire Department Over Discriminatory Hiring Practices Resulting in \$98 Million in Relief (Mar. 18, 2014), <http://www.justice.gov/opa/pr/justice-department-reaches-agreement-principle-new-york-city-fire-department-over>.

^{xii} N.R. Kleinfield, *The Race Gap in America's Police Departments Baptism by Fire: A New York Firefighter Confronts His First Test*, N.Y. TIMES, June 20, 2014.

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I. Why Diversity Matters:

1. Fridell, Lorie, Robert Lunney, Drew Diamond, and Bruce Kubu. 2008. *Racially Biased Policing: A Principled Response*. Washington DC: Police Executive Research Forum.

Abstract: A police agency whose officers reflect the racial demographics of the community they serve fulfills several important purposes in reducing racial bias in policing. First, it conveys a sense of equity to the public, especially to minority communities. Second, it increases the probability that, as a whole, the agency will be able to understand the perspectives of its racial minorities and communicate effectively with them. Third, it increases the likelihood that officers will come to better understand and respect various racial and cultural perspectives through their daily interactions with one another.

2. Sklansky, David A. 2006. "Not Your Father's Police Department: Making Sense of the New Demographics of Law Enforcement." *The Journal of Criminal Law & Criminology* 96 (3): 1209-1243.

Abstract: This article has three parts. The first part describes how the makeup of police workforces has changed over the past several decades. To summarize, the workforce has grown much more diverse with regard to race, gender, and more recently, sexual orientation—but the pace of change has varied greatly from department to department, and virtually all departments have considerable progress to make with respect to diversity. The second part of the article assesses the effects of the changes that have already occurred in law enforcement demographics. The author considers three different categories of effects: competency effects (ways in which minority officers, female officers, and openly gay and lesbian officers may have distinctive sets of abilities), community effects (ways in which the demographic diversity of a police department may affect its relations with the community it serves), and organizational effects (ways in which the workforce diversity may affect the internal dynamics of the department itself). The third part of the article concludes by exploring the ramifications of the changing demographics of law enforcement.

3. Wasserman, Robert. 2010. *Guidance for Building Communities of Trust*. Washington DC: Office of Community Oriented Policing Services.

Abstract: The Guidance describes the challenges that must be addressed by fusion centers, local law enforcement agencies, and communities in developing relationships of trust. These challenges can only be met if privacy, civil rights, and civil liberties are protected. For fusion centers, this requires strong privacy policies and audits of center activities to ensure that the policies and related standards are being fully met. For law enforcement agencies, it means that meaningful dialogue and collaboration with communities needs to occur in a manner that increases the legitimacy of the agency in the eyes of that community. Law enforcement must establish legitimacy in the communities they serve if trusting relationships are to be established. For communities, their leaders and representatives must collaborate with law enforcement and share responsibility for addressing the problems of crime and terrorism prevention in their neighborhoods.

II. Barriers to Diversity:

1. Comeau, Michelle J. 2011. *Representation and Recruitment: A Three-Part Analysis of the Police Hiring Process Within New York State*. Rochester, New York: Rochester Institute of Technology.

Abstract: The article consists of three separate analyses, each of which examines the representation of women, African Americans, and Latinos in police organization within New York State. The initial study compares department representation to that of the community in regards to race or ethnicity and gender. This is followed by the second study, which does a detailed look at the hiring process of one department within a mid-sized city (Rochester, NY), noting attrition by majority/minority status at each hurdle applicants face. The third study utilizes data from the second study to create a model of attrition for the Rochester Police Department. From the three studies, a series of recommendations for departments was developed, including: (1) identify department needs and allot resources appropriately; (2) track application submissions which can assist in identifying times that departments should increase their recruitment efforts; (3) tailor advertisements in a manner that would promote diverse representation; (4) increase engagement through job fairs and reaching out to local professional organizations and community groups; and (5) hold informational sessions prior to, and during, recruitment efforts to provide interested parties with a realistic portrayal of the police officer position.

2. Jordan, William T., Lorie Fridell, Donald Faggiani, and Bruce Kubu. 2009. "Attracting Females and Racial/Ethnic Minorities to Law Enforcement." *Journal of Criminal Justice* 37 (4): 333-341.

Abstract: Using a national survey of law enforcement agencies, this study: (1) measured agencies' ability to fill sworn positions; (2) identified the strategies used to attract and hire females and minorities; (3) measured agencies' success in filling sworn positions with females and minorities; and (4) measured the impact of agency strategies and characteristics on levels of female and minority applications and hires. The results indicated great variation in agencies' ability to fill sworn positions with females and minorities, as well as considerable variation in the extent to which mechanisms are used to attract females and minorities to policing. The multivariate analyses indicate that investing in a recruitment budget and targeting minorities and women positively affects hiring.

3. Matthies, Carl F., Kirsten M. Keller, and Nelson Lim. 2012. "Identifying Barriers to Diversity in Law Enforcement Agencies." *RAND Center on Quality Policing*. Occasional Paper.

Abstract: This paper describes one method that law enforcement agencies can use to better understand and address the challenges of a diverse workforce in law enforcement agencies: a barrier analysis. Barrier analysis is a method of assessment aimed at identifying potential obstacles to obtaining resources or participating in a program. Using this tool, the article encourages law enforcement agencies to evaluate how women and racial/ethnic minorities face obstacles that might account for less-than-proportionate representation among applicants, hires,

and senior leadership. In the context of employment opportunities, the authors focus on how barrier analyses can be used to understand diversity-related challenges at key points in the career lifecycle, such as recruitment, hiring, promotion, and retention practices. They also present a complete barrier analysis that agency leaders can incorporate to identify key barriers and take proactive steps to build a more diverse workforce. Case studies are used to provide guidance for agencies to take proactive steps toward remedying the lack of representation in their workforces.

4. McCafferty, Francis L. 2003. "The Challenge of Selecting Tomorrow's Police Officers from Generation X and Y." *Journal of the American Academy of Psychiatry and the Law* 31 (1): 78-88.

Abstract: Demands on police officers in the past thirty years have grown dramatically with the increasing threats to social order and personal security. Selection of police officers has been difficult, but with the increasing demand and complexity of police work, along with the candidates applying from Generation X and even Generation Y, the selection process has become more critical. The personal characteristics attributed to Generation X—and in the future, to Generation Y—should be factored into the selection process to ensure that those individuals selected as police officers will be able to cope with what has been described as the impossible mandate of police work in a free society. Background information on the X and Y generations is imperative for psychiatrists working with police departments and other law enforcement agencies. This article explores these areas and constructs a paradigm selection process.

5. Miller, Susan L., Kay B. Forest, and Nancy C. Jurik. 2003. "Diversity in Blue: Lesbian and Gay Police Officers in a Masculine Occupation." *Men and Masculinities* 5 (4): 355-385.

Abstract: This study explores how lesbian and gay police officers fare within law enforcement agencies. Using qualitative survey responses from a sample of "out" and "closeted" gay and lesbian police officers in a Midwestern city, the authors examine: (1) how police organizations' cultures inform their experiences; (2) how officers navigate multiple aspects of their identities, including sexual orientation, gender, race, and ethnicity; and (3) the strategies lesbian and gay officers utilize to manage themselves in the workplace. The findings suggest that these officers support a more humane approach to policing and see themselves as particularly qualified to work within vulnerable communities.

6. Richard, Roseann M. 2001. *The Perceptions of Women Leaders in Law Enforcement on Promotions, Barriers and Effective Leadership*. San Francisco, California: The University of San Francisco.

Abstract: The purpose of this study is to identify factors that undermine successful career advancement for women in law enforcement. Through telephone interviews with women holding command positions of Captain or higher, the study described the perceptions of women law enforcement commanders on leadership effectiveness, challenges, and self-perception. The findings presented may be used as the basis for further assessment of effective law enforcement leadership and supervisory practices across various federal, state, local, and campus law enforcement agencies. In addition, the results from the study can be used to guide departmental

development of existing management and supervisory programs; update or create harassment and discrimination training where none previously existed; and allocate departmental resources for promotional test training programs and the testing processes.

7. Stroshine, Meghan S., and Steven G. Brandl. 2011. "Race, Gender, and Tokenism in Policing: An Empirical Elaboration." *Police Quarterly* 14 (4): 344-365.

Abstract: According to tokenism theory, "tokens" (those who comprise less than 15% of a group's total) are expected to experience a variety of hardships in the workplace, such as feelings of heightened visibility, isolation, and limited opportunities for advancement. In the policing literature, most previous studies have defined tokenism narrowly in terms of gender. The current research extends prior research by examining tokenism as a function of gender and race, with an examination of racial/ethnic subgroups. Particular attention is paid to Latino officers, as this study represents the first known study of tokenism and Latino police officers. Quantitative analyses reveal that, for the most part, token police officers do experience the effects of tokenism. Although all minorities experienced some level of tokenism, African-American males and African-American females experienced greater levels of tokenism than Latino officers, suggesting that race is a stronger predictor of tokenism than gender.

8. Wilson, Charles P., and Shirley A. Wilson. 2014. "Are We There Yet? Perceptive Roles of African American Police Officers in Small Agency Settings." *The Western Journal of Black Studies* 38 (2): 123-136.

Abstract: One aspect of police behavior that has not been fully or consistently emphasized is the problem of perception, particularly how African-American police officers serving in smaller law enforcement agencies perceive themselves and their view of how their agencies and the communities they serve perceive them. For this article, African-American police officers were surveyed to determine their perceptions of the positive or negative effects of their presence in local police agencies. Key findings indicate that African-American police officers still find themselves victims of racial indifference and seemingly hostile work environments; believe that racial profiling is both practiced and condoned by their agencies; that agencies do little to improve diversity and provide little support for their efforts; and that they strongly perceive their presence in these smaller agencies to have a positive impact on police interactions in the minority community.

III. Best Practices for Achieving Diversity:

1. Bureau of Justice Statistics. 2012. *Survey: Hiring and Retention of State and Local Law Enforcement Officers, 2008-Statistical Tables*. Washington DC: Office of Justice Programs.

Abstract: A special survey was administered to a nationally representative sample of approximately 3,000 general purpose agencies as part of the 2008 BJS Census of State and Local Law Enforcement agencies. The study examined specific strategies and policies designed to help them meet the challenges of recruiting, hiring, and retaining qualified sworn personnel.

2. Equal Employment Opportunity Commission. 2003. Management Directive 715.

Abstract: The EEOC provides leadership and guidance to federal agencies on all aspects of the federal government's equal employment opportunity program. Management Directive 715 (MD-715) requires agencies to take appropriate steps to ensure that all employment decisions are free from discrimination and sets forth the standards by which the EEOC will review the sufficiency of agency Title VII and Rehabilitation Act programs. MD-715 sets forth and describes six essential elements for model programs. Pursuant to element four, Proactive Prevention of Unlawful Discrimination, agencies "have an ongoing obligation to prevent discrimination on the bases of race, color, national origin, religion, sex, age, reprisal and disability, and eliminate barriers that impede free and open competition in the workplace. As part of this ongoing obligation, agencies must conduct a self-assessment on at least an annual basis to monitor progress, identify areas where barriers may operate to exclude certain groups and develop strategic plans to eliminate identified barriers." The background materials include MD-715, Section IIA of EEOC's Instruction to Federal Agencies for MD-715 (Barrier Identification and Elimination), which provides a detailed explanation of the self-assessment process, and "Tips for Small Agencies Conducting Barrier Analysis under MD-715."

3. Haddad, Abigail, Kate Giglio, Kirsten M. Keller, and Nelson Lim. 2012. "Increasing Organizational Diversity in 21st Century Policing."

Abstract: Both the military and police departments are concerned about recruiting and promoting a racially/ethnically diverse workforce. This paper discusses three broad lessons from the Military Leadership Diversity Commission that can be used to inform police department hiring and personnel management: (1) qualified minority candidates are available, (2) career paths impact diversity, and (3) departments should leverage organizational commitment to diversity. Additionally, specific suggestions are given as to how law enforcement agencies can incorporate each of these lessons.

4. Kasdan, Alexa. 2006. *Increasing Diversity in Police Departments: Strategies and Tools for Human Rights Commissions and Others*. Harvard School of Government.

Abstract: The goal of the article is to help human rights and human relations commissions work with police officials to increase race and gender diversity among law enforcement personnel. The article studies three jurisdictions: Rhode Island, Kentucky, and Atlanta. The article

discusses how states should support local police departments in achieving diversity, including offering grants, training opportunities, and help in assessing diversity. There needs to be a firm commitment to diversity from police chiefs and police administrators. In order to achieve diversity, there needs to be partnerships and collaboration, outreach, hiring reform, and long-term recruitment efforts.

5. Matthies, Carl F. 2011. *Evidence-Based Approaches to Law Enforcement Recruitment and Hiring*. Santa Monica, California: Rand Corporation.

Abstract: Recruiting diverse, qualified candidates is a continual challenge for law enforcement. Around the turn of the millennium, many metropolitan agencies reported a shortage of individuals interested in police work. With the downturn in the economy came a flood of applicants, but funding for recruitment and hiring eventually decreased. Law enforcement can benefit from evidence-based approaches to evaluating recruitment programs and streamlining the application process.

6. Taylor, Bruce, Bruce Kubu, Lorie Fridell, Carter Rees, Tom Jordan, and Jason Cheney. 2005. *Cop Crunch: Identifying Strategies for Dealing with the Recruiting and Hiring Crisis in Law Enforcement*. Police Executive Research Forum.

Abstract: The processes of recruitment and selection are key to developing agencies with high-quality personnel and to producing agencies that are representative of their communities in terms of race and gender. The challenge of recruiting and hiring quality personnel has emerged as a critical problem facing law enforcement nationwide. It threatens to undermine the ability of law enforcement to protect our nation's citizens and to reverse important gains in our efforts to increase the representation on our police forces of racial/ethnic minorities and women. The Police Executive Research Forum conducted this project, with funding from the National Institute of Justice, to examine the nature and extent of the "cop crunch" and identify department-level policies/practices that facilitate the recruiting and hiring of quality personnel, including the recruiting and hiring of quality women and minorities.

7. White, Michael D., Jonathon A. Cooper, Jessica Saunders, and Anthony J. Raganella, 2010. "Motivations for Becoming a Police Officer: Re-assessing Officer Attitudes and Job Satisfaction After Six Years on the Street." *Journal of Criminal Justice* 38 (4): 520-530.

Abstract: This article was a follow-up to prior research that examined motivations among academy recruits in the New York City Police Department (NYPD). Using the same survey and analysis, this study re-examined motivations among officers from the same NYPD recruit class after six years on the job, and explored both motivation stability and the relationships among motivations and job satisfaction. Results suggested that motivations have remained highly stable over time, regardless of officer race/ethnicity and gender. Findings also suggested that white male officers were most likely to report low job satisfaction, and that there is a link between low satisfaction and unfulfilled motivations. Moreover, dissatisfied officers were much less likely to have expressed strong commitment to the profession through their original motivations, suggesting that low commitment up front may lead to low satisfaction later on. The article

concludes with a discussion of implications for police departments, particularly with regard to recruitment and retention practices and efforts to achieve diversity.

8. U.S. Commission on Civil Rights. 2000. *Revisiting Who is Guarding the Guardians?*

Abstract: Within law enforcement agencies, claims of sexual and racial harassment, disparity in pay, and low job satisfaction make police careers unattractive. Additionally, the selection process for police officers often contains biases that, in effect, eliminate candidates of color and noncitizen permanent residents from being hired. The Commission recommends, among other things, that law enforcement agencies: (1) develop creative strategies to increase diversity at all levels, (2) improve public perception of the police to attract more applicants, (3) encourage recruits to pursue higher education, (4) eliminate biases in the selection system, and (5) revise recruitment and selection methods.

IV. Characteristics of High Quality Law Enforcement Personnel:

1. Barrick, Murray R., and Michael K. Mount. 1991. "The Big Five Personality Dimensions and Job Performance: A Meta-Analysis." *Personnel Psychology* 44 (1): 1-26.

Abstract: The study investigated the relation of the "Big Five" personality dimensions (extraversion, emotional stability, agreeableness, conscientiousness, and openness to experience) to three job performance criteria (job proficiency, training proficiency, and personnel data) for five occupational groups (professionals, police, managers, sales, and skilled/semi-skilled). Results indicated that one dimension of personality—conscientiousness—showed consistent relations with all job performance criteria for all occupational groups. For the remaining personality dimensions, the estimated true score correlations varied by occupational groups and criterion type. The findings have numerous implications for research and practice in personnel psychology, especially in the subfields of personnel selection, training and development, and performance appraisal.

2. Ben-Porath, Yossef S., James M. Fico, Neil S. Hibler, Robin Inwald, Joelle Kruml, and Michael R. Roberts. 2011. *Assessing the Psychological Suitability of Candidates for Law Enforcement Positions*.

Abstract: This article describes and elaborates on the International Association of Chiefs of Police's Police Psychological Services Section's recommended procedures for conducting pre-employment evaluations of law enforcement candidates, with an emphasis on steps the hiring agency's administrators can take to ensure adherence to these practices.

3. Chappell, Allison T. 2008. "Police Academy Training: Comparing Across Curricula," *Policing: An International Journal of Police Strategies and Management*. 31 (1): 36-56.

Abstract: This study compared the academy performance of police recruits trained in a traditional curriculum with that of recruits trained under a new curriculum tailored to community-policing tasks; it also compared the characteristics of recruits who performed better under the community-policing curriculum with those who performed better under the traditional curriculum. The study found that recruits in both curricula performed similarly in terms of their mastery of the material; however, the recruits who performed better in the community-policing curriculum were more highly educated and female. The study examined recruit characteristics and performance in Florida's Police Academy under a traditional curriculum that emphasized preparation for law enforcement tasks, such as firearms training, physical training, defensive tactics, and driving, in addition to knowledge areas such as law, arrest procedures, traffic enforcement, and officer safety. Little attention was given to communications, cultural and ethnic diversity, problem solving, and police-community relations. The Florida Police Academy subsequently modified its curriculum to reflect the police tasks emphasized under community policing, which focus on greater police communication, interaction, and cooperation with the community in forging community-based priorities and practices in crime prevention and crime control. The community-policing curriculum focused on the application of learning rather than memorization, the use of a problem-solving model throughout the academy, and the use of scenarios as the basis for learning.

4. Marion, Nancy. 1998. "Police Academy Training: Are We Teaching Recruits What They Need To Know?" *Policing: An International Journal of Police Strategies and Management*. 21 (1): 54-79.

Abstract: The description of the basic police academy focuses on training duration, entrance requirements, class make-up, environment, instruction, and stress. A review of knowledge learning addresses civil liability, ethics, special needs groups, public relations/cultural diversity, and examinations. An overview of skill training considers firearms training, self-defense, physical training, and communication skills. An overview of hazardous-materials training also is provided, along with attitude training. The study concludes that overall this particular police academy is providing the information and skills training required to prepare recruits to be police officers. However, the study found the academy lacking in its ability to transmit the proper attitudes for new police officers. There remains an obvious element of sexism and an element of elitism on the part of some instructors, which was made obvious to the recruits. There are a few areas not included in the training, specifically ethics and helping the elderly or victims of crime. The addition of female and minority instructors may help create change. Possible changes in future police academy training are discussed.

APPENDIX A: LIST OF EXPERTS

Kathleen Lundquist, Ph.D.

President and Chief Executive Officer
APTMetrics, Inc.

Mark Killingsworth, Ph.D.

Professor of Economics
Rutgers University School of Arts and Sciences

Marc Bendick, Ph.D.

Co-Founder and Co-Principal
Bendick and Egan Economic Consultants, Inc.

David P. Jones, Ph.D.

President
Growth Ventures Inc.

APPENDIX B:
WRITTEN TESTIMONY OF JENNY YANG
CHAIR, U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of the Chair

**Written Testimony before the
President's Task Force on 21st Century Policing**

**Jenny R. Yang, Chair
U.S. Equal Employment Opportunity Commission**

On behalf of the U.S. Equal Employment Opportunity Commission, I thank Chairs Charles Ramsey and Laurie Robinson, Task Force members, and Executive Director Ronald Davis for inviting written testimony from the EEOC. We write to support the Task Force's efforts "to identify best practices and ... make recommendations to the President on how policing practices can promote effective crime reduction while building public trust."¹ In the wake of the events in Ferguson, New York City, Cleveland, and across the country, your efforts are timely and vital. I commend you on the success of the Task Force's first listening session and on your inclusion of workforce diversity as one of the strategies that will aid state and local law enforcement in building trust and legitimacy in the communities they serve and, ultimately, in achieving effective, community-oriented policing.

Promoting equality of opportunity in the public sector is vital to the EEOC's mission to stop and remedy unlawful employment discrimination in the workplace. We write to provide background on the EEOC's work to promote equality of opportunity in policing and to offer recommendations to assist police forces in drawing from the diversity of their community.

EEOC AUTHORITY & RESOURCES

Fifty years ago, Title VII of the Civil Rights Act of 1964 created the EEOC as the leading government agency charged with enforcing civil rights protections in the workplace. Today, we have 53 field offices nationwide, and we enforce federal laws prohibiting discrimination on the basis of race, color, religion, sex, national origin, age (40 or older), disability or genetic information.² Our jurisdiction includes private, federal, and public sector workplaces, which include state and local law enforcement agencies.³

¹ Executive Order 13684 to Establish the President's Task Force on 21st Century Policing (December 18, 2014), *available at* <https://www.federalregister.gov/articles/2014/12/23/2014-30195/establishment-of-the-presidents-task-force-on-21st-century-policing>.

² EEO laws also prohibit retaliation on the basis of complaining about discrimination, filing a charge of discrimination, or participating in an employment discrimination investigation or lawsuit.

³ The EEOC's federal sector enforcement program covers federal agencies, including federal law enforcement agencies. The Commission is authorized to hold hearings on EEO complaints against federal

The EEOC shares enforcement authority for public sector employers with the Department of Justice's Civil Rights Division ("CRT") under Title VII, the Americans with Disabilities Act ("ADA"), and the Genetic Information Nondiscrimination Act ("GINA"). Generally, the Commission receives, investigates, and may attempt to mediate charges of discrimination against public employers. Where the Commission finds reasonable cause to believe an unlawful employment practice has occurred, it attempts to conciliate those charges. Commissioners may also file Commissioner's Charges against public employers. If conciliation of a charge fails, the EEOC refers the charge and its investigative file to CRT, which has authority to sue public employers. The EEOC also has authority under Title VII, ADA, and GINA to sue labor organizations that represent state and local employees or employment agencies that service state and local employers.⁴

Moreover, the Commission has the authority to receive, investigate, attempt to mediate, conciliate, and sue regarding a charge of discrimination against a public employer under the Age Discrimination in Employment Act of 1976 (ADEA) and receive, investigate, and sue under the Equal Pay Act of 1963 (EPA).

The EEOC is also authorized to collect workforce demographic data from employers with more than 100 employees. State and local government workforce data, including data from certain police departments, is captured on the EEO-4 form. The data of individual state and local government employers is not made public, but aggregate data may be shared to provide information about employment by race, ethnicity, and gender in various job groups and by salary bands within those job groups.

The EEOC is also charged with providing guidance and conducting training and outreach to promote equal employment opportunity and encourage voluntary compliance with the laws we enforce.

agencies and adjudicate appeals from federal agency administrative decisions. The EEOC also monitors and collects data on agencies' compliance with EEO laws, monitors and evaluates federal agency affirmative employment programs, and conducts education and outreach aimed reducing barriers to equal employment and EEO compliance. As an example, in Fiscal Year 2013, the EEOC found in favor of a class of female agents in a pattern or practice action against the Drug Enforcement Agency involving discrimination in foreign assignments and promotions on the basis of sex. *Garcia v. Dep't of Justice*, EEOC Appeal No. 0120122033, 2013 WL 2903347 (June 7, 2013).

⁴ As an example, in Fiscal Year 2012, the EEOC filed suit against Jacksonville Association of Firefighters (Local 122 of the International Association of Fire Fighters). The EEOC alleged that the union negotiated with the City of Jacksonville for a racially discriminatory written exam in the promotion process that it knew to have a disproportionate adverse impact on Black test takers. Case No. 3:12-cv-00491-MMH-TEM (M.D. Fla.). The Department of Justice filed a companion suit against the city. Case No. 3:12-cv-00451-TJC-MCR, (M.D. Fla.).

IMPORTANCE OF EEO COMPLIANCE & DIVERSITY

The EEOC's Strategic Enforcement Plan prioritizes eliminating systemic barriers to hiring and recruitment in the public, private, and federal sectors under all of the laws we enforce.⁵ These laws prohibit employers from using recruitment practices or selection procedures that have the purpose or effect of discriminating against individuals based on their protected characteristic(s).

As an example, Title VII permits employment tests to be used as long as they are not "designed, intended or used to discriminate" against covered individuals⁶ and imposes restrictions on how tests are scored.⁷ Title VII also prohibits employers from using facially-neutral tests or selection procedures that disproportionately exclude covered individuals where the tests or procedures are not "job-related and consistent with business necessity" for the position in question.⁸ The Uniform Guidelines on Employee Selection Procedures ("UGESP") were promulgated to be used by employers, including law enforcement agencies, to evaluate their selection practices and assess whether they are in compliance with the law.⁹ The use of any selection procedure that has an adverse impact based on a category protected under Title VII will be considered discriminatory unless the procedure is job-related and consistent with business necessity, i.e. it has been properly validated,¹⁰ or the use of the procedure is otherwise justified under federal law.¹¹

Although EEO enforcement is distinct from the promotion of diversity in the workplace, the concepts are linked, as compliance with EEO laws will often lead to greater diversity in the workplace. Moreover, the absence of diversity is often a critical indicator of potential barriers to

⁵ Available at <http://www.eeoc.gov/eeoc/plan/sep.cfm>.

⁶ *Id.* at § 2000e-2(h).

⁷ *Id.* at § 2000e-2(l) (it is an unlawful employment practice "to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment-related tests on the basis of race, color, religion, sex, or national origin"). The ADA also addresses prohibited practices related to employment tests. *See* 42 U.S.C. § 12112(b).

⁸ 42 U.S.C. § 2000e-2(k)(1)(A)(1); *see Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971).

⁹ 29 C.F.R. Part 1607; *see Albemarle Paper Co. v. Moody*, 422 U.S. 405, 431 (1975).

¹⁰ *See, e.g., Isabel v. City of Memphis*, 404 F.3d 404, 413-14 (6th Cir. 2005) (City's use of a written test for promotion to police lieutenant resulted in a disparate impact on African Americans; City's procedure was not properly validated and therefore "had no business justification.") UGESP instructs employers to rely upon "criterion-related validity studies, content validity studies or construct validity studies" to validate a selection procedure. 29 C.F.R. § 1607.5(A).

¹¹ *Id.* at §§ 1607.3, 1607.6; *see Officers for Justice v. Civil Serv. Comm'n*, 979 F.2d 721, 728 (9th Cir. 1992) ("[B]efore utilizing a [selection] procedure that has an adverse impact on minorities, the City has an obligation pursuant to the *Uniform Guidelines* to explore alternative procedures and to implement them if they have less adverse impact and are substantially equally valid [to other options].").

equal employment opportunity in the workplace. As witnesses testified during the first Task Force listening session, and as reported by the 1967 Kerner Commission, while a diverse police force will not alone ensure effective community policing or the protection of civil rights, a police force that reflects the community it serves can aid in building trust and legitimacy in the community. This can lead to higher quality and more effective law enforcement. The EEOC is highly interested in the work of the Task Force with respect to diversity, and we encourage the inclusion of diversity and EEO compliance in your final recommendations.

DATA FROM THE FIELD

In Fiscal Year 2014, the EEOC received 1,152 charges against entities listed as “police” or “sheriff” departments.¹² The top basis for these charges was retaliation under all statutes (50.5 percent, with 43.6 percent alleging retaliation under Title VII alone), followed by discrimination on the basis of sex (36.5 percent), race (34.2 percent), disability (29.4 percent), and age (16.5 percent).¹³ Sorted by issue raised, the top issues were harassment (34.5 percent), discriminatory terms and conditions of employment (33.2 percent), discriminatory discipline (20.4 percent), and reasonable accommodation related discrimination (12.3 percent). Promotion, assignment, intimidation, suspension, and hiring discrimination were all issues raised, but each category fell under 10 percent.¹⁴

Although the EEOC’s charge data provides insight into employment discrimination issues alleged, it should not alone be used to gauge the scope or severity of discrimination or a particular type of discrimination in any given sector. Many employees and job seekers do not take the step of filing charges and many others, especially in the case of recruitment and hiring discrimination, are not aware that a violation has occurred.¹⁵ In contemplation of this, Congress authorized Commissioners to file charges under Title VII when they have reason to believe discrimination has occurred and similarly authorized the EEOC to file Directed Investigations under the EPA and ADEA.

The EEOC also utilizes its education and outreach programs to promote equal employment opportunity in the public sector. In Fiscal Year 2014, our program analysts conducted 43 trainings for state and local law enforcement agencies. These trainings focused on topics such as an overview of EEO laws, implicit bias, diversity and inclusion, employer responsibility and complaint resolution, and harassment. As a result of our nationwide presence, the EEOC has

¹² Although the EEOC's system does not separately track charges against police departments *per se*, we can track charges against entities which expressly contain the word "police" or "sheriff." While using this method somewhat undercounts the charges against police departments, some of which, for example, may only name the municipality involved, we do believe it constitutes a representative sample of the kinds of complaints being made.

¹³ The percentages for charges in FY 2014 alleging EPA or GINA violations is under one percent.

¹⁴ Also, some charges allege more than one basis or issue of discrimination.

¹⁵ It should also be noted that not all charges will result in a finding of discrimination.

ongoing relationships with state and local governmental employers, sometimes in small localities where there is little federal presence and sometimes as an institutional partner with a larger employer. As an example, the Denver Field Office has partnered with the Denver Sheriff's Department to teach its curriculum on anti-harassment and bullying for new recruits. With the renewed focus on quality community policing and the role diversity plays in achieving it, the EEOC expects and is well positioned to form new and deeper partnerships that will benefit EEO enforcement, police departments, and the public alike.

NEXT STEPS & RECOMMENDATIONS

EEOC Next Steps

The EEOC is working with CRT, others at DOJ, and experts in the field to:

1. Identify instances in which the use of certain recruitment, hiring, and promotion practices in law enforcement may serve as barriers to equal employment opportunity;
2. Facilitate the development of best practices for EEO compliance and achieving and maintaining greater police force diversity; and
3. Develop and deploy effective EEO and diversity/inclusion training for different state and local law enforcement audiences, including department leadership, human resources, and hiring officials (including those in Civil Service Commissions who often design police hiring criteria), union leadership, and individual officers.

The EEOC will also continue evaluating charge and EEO-4 data for outreach and systemic administrative and legal enforcement opportunities.

Recommendations for Task Force

We encourage the Task Force to:

1. Invite oral and written testimony on recruitment, hiring, and promotion practices that promote equal employment opportunity in policing;
2. Examine the qualities needed to be a successful police officer and identify relevant selection practices;
3. Encourage additional research to quantify the benefits of a diverse police force that reflects the community served;
4. Highlight those departments where diversity has proven an effective law enforcement strategy and highlight the approaches taken, as appropriate; and
5. Consider the use of grants to assist small and mid-sized police departments in conducting barrier analyses and taking proactive measures to comply with EEO law and achieve or maintain a diverse workforce.

Resources for the Task Force

To aid the Task Force in its work, in the coming weeks, the EEOC and CRT will:

1. Recommend experts who can provide oral or written testimony on recruitment, hiring, and promotion practices that promote equal employment opportunity in policing; and
2. Submit a literature review on workforce diversity in police departments, including barriers, best practices, and job qualifications.

As resources permit, the EEOC can also provide the Task Force additional information on our charge and EEO-4 data.

CONCLUSION

Thank you again for your consideration of this testimony and the important role diversity plays in ensuring 21st Century policing that meets the needs of our nation. The Commission looks forward to working with you.

EXHIBIT

“5”

NORTH MIAMI POLICE DEPARTMENT

Organizational Chart

