

This nation was founded by men of many nations and backgrounds. It was founded on the principle that all men are created equal, and that the rights of every man are diminished when the rights of one man are threatened ... It ought to be possible, in short, for every American to enjoy the privileges of being American without regard to his race or his color.”

—John F. Kennedy





Advancing Diversity in Law Enforcement

A legal and moral imperative

Recently, law enforcement has been under a barrage of criticism by the media, the U.S. Department of Justice (DOJ), and the public amidst allegations of civil rights violations and disparate labor forces. Claims of racial discrimination continue to dominate the headlines and fuel distrust of the police by those who feel disenfranchised by the system.

The problem is intensified by a toxic political environment where objective discourse and compromise seem to be unattainable. The challenges faced by municipal police departments appear to be daunting, especially when constrained by cash-strapped budgets. However, these challenges are far from insurmountable if elected and police officials work together

toward implementing innovative strategies designed to achieve a fair and just system of law enforcement.

Against this backdrop, local elected officials and police command staff must now, more than ever before, demonstrate leadership by effectively coordinating policies that will protect civil rights while gaining the public's trust and confidence in law enforcement. These goals are accomplished through codified mission statements, well-defined standard operating procedures, and training that focuses upon such critical issues as the use of force, racial profiling, and the respect for due process of law.

As part of this strategy, local governments should also strive to cultivate the recruitment of a

diverse group of police officers, while ensuring a culture within the ranks of the department that does not tolerate discrimination or harassment of any sort.

The DOJ and the U.S. Equal Employment Opportunity Commission (EEOC) provide enforcement, data analysis, and technical assistance to address diversity in law enforcement. In December 2015, the DOJ's Civil Rights Division and the EEOC "launched a new research initiative, Advancing Diversity in Law Enforcement, both to identify barriers that undermine diversity in law enforcement and to highlight promising practices that help agencies better reflect the diversity of the communities they serve."ⁱ

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The government's research revealed that "increased diversity within law enforcement agencies – defined not only in terms of race and gender, but also other characteristics including religion, sexual orientation, gender identity, language ability, background, and experience – serves as a critically important tool to build trust with communities... and instills "public confidence in government and supports the integrity of democracy."ⁱⁱ

Recruitment & Hiring

Police professionals continue to strongly endorse diversity in recruitment and hiring that should result in a police force that is more representative of the community it serves.ⁱⁱ The International Association of Chiefs of Police ("IACP"), acting in cooperation with the DOJ's Office of Community Oriented Policing Services ("COPS"), has provided recommendations on how to recruit and hire officers from diverse backgrounds.ⁱⁱⁱ

These recommendations include the following:

- Effectively communicating between the chief of police and elected officials regarding recruitment and hiring police;
- Actively engaging with the local community through such means as sponsorships of police athletic leagues;
- Collaborating with other police agencies;

- Involving all ranks in the department as part of a "total agency approach";
- Enhancing web outreach to expand the labor pool of diverse candidates outside the locality;
- Hiring of transitional skilled workers who have left their careers in fields such as teaching, aviation, and medicine because of mandatory or preferred retirement dates; and
- Streamlining recruitment and hiring processes that allow for expedient placement.

It should be noted that Title VII of the Civil Rights Act, which prohibits employment discrimination based on protected classes such as race, gender, and ethnicity, does *not* require employers to affirmatively hire persons from underrepresented groups.

Moreover, municipal employers who implement affirmative action programs that allow for consideration of a person's race or gender should consult with experienced counsel. While such programs have been upheld by the courts, those cases involve limited circumstances. A municipality must be able to show that the plan is justified by evidence of past discrimination or disparities that support a need for affirmative action.

The plan must also be supported by evidence demonstrating that it is necessary to achieve a compelling state interest and is narrowly tailored to achieve a diverse workforce.^{iv}

Police Department Culture

The culture of the police department will depend upon the quality of personnel management that is implemented. How officers interact with the public will be influenced by the manner in which they are permitted to conduct themselves during calls for service, while back at the police station and off duty. It follows that the municipal employer (i.e., the elected council and boards of supervisors and commissioners) will be ultimately responsible for ensuring that police misconduct or neglect are appropriately handled. All municipal police departments must take adequate measures to prohibit discrimination, harassment, and retaliation through procedures that allow for the filing of external and internal complaints, require prompt and fair investigations, and ensure timely action, if warranted.

Recommended Best Practices

Local elected officials should be mindful of the potential exposure in civil rights lawsuits in the event they "turn a blind eye" to the staffing of the police department.

While the Borough Code provides that the mayor is responsible for the day-to-day operations of the department, the council serves as the final policymaker authorized to *hire* police (subject



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to applicable civil service regulations and fair employment laws).

It follows that the council should not blindly delegate this critical function to other officials or employees. Council should also ensure an effective line of communication between and among its members, the mayor, and the chief of police concerning management of the department.

As such, the implementation of a clearly defined internal affairs policy that is understood and followed by everyone in the chain of command is essential to safeguard the civil rights of the public and police personnel.

The council, mayor, and police chief, in consultation with experienced legal counsel, should promptly engage in a meaningful assessment of how the

department is staffed and managed. The authoritative sources referenced here should serve as a practical framework to develop strategies to achieve that goal. Given the vital importance of our civil rights and the need for a police force that is representative of the community it serves, business as usual is unacceptable.

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Editor's note: Gerber will be presenting a session, Understanding Police Operations for Elected Officials, at the PA Municipal Legal Update in August. For more information, turn to page 74. ^B

ⁱ *Advancing Diversity in Law Enforcement*, Report by the U.S. Department of Justice & Equal Employment Opportunity Commission, 2016.

ⁱⁱ *Protecting Civil Rights: A Leadership Guide for State, Local, and Tribal Law Enforcement*, International Association of Chiefs of Police, September 2006.

ⁱⁱⁱ *Law Enforcement Recruitment Toolkit*, International Association of Chiefs of Police (IACP) & Office of Community Oriented Policing Services (COPS), June 2009; COPS is an arm of the U.S. Department of Justice that is responsible for advancing the practice of community policing by the nation's state, local, territory, and tribal law enforcement agencies through information and grant resources.

^{iv} See *U.S. v. Paradise*, 480 U.S. 149, 107 S. Ct. 1053 (1987) and *Johnson v. Transportation Agency, Santa Clara County*, 480 U.S. 616, 107 S. Ct. 1442 (1987).