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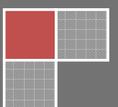
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2009

The Unjust Selection Of Justice Professionals

Balancing Fairness for Police Officer Applicants and the Potential Citizens They Will Serve.

Robert W. Boyle, Under the Direction of Dr. Khalil Habib
Salve Regina University
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The Unjust Selection of Justice Professionals

Balancing Fairness for Police Officer Applicants and the Potential Citizens They Will Serve

Law enforcement is one of the nation's fastest growing career paths in recent history and is therefore one of the most competitive job markets. Applicants are tested and retested in order for police departments to hire the strongest of the applicant pool. Officers are rigorously challenged both physically and mentally in order to remove the weak in search of the strongest candidates who are most qualified to effectively serve and protect the community. The purpose of a police department, just like any aspect of public service, is to effectively serve the needs of the community while meeting the minimal expectations of its members. Citizens expect that a public service and all of its members will be equally competent to properly serve the needs of citizens.

The contemporary challenge that police departments as well as other public safety and service departments are presently facing, is balancing fairness for applicants and the community they will potentially serve. In the selection process of new officers, there are two primary goals that a department may try to achieve: primarily, the department is seeking qualified and competent applicants in order for the department to more effectively serve the community and keep its members safe; the secondary goal of these departments is to diversify their population by seeking individuals that can bring a different perspective, talent, or skill to the department. Such diversity is commonly seen as race and gender, but may expand to language or technological skills as well. Unfortunately, many departments seek diversity by focusing on the former inherent traits such as race and gender, whereas individuals with specialized skills or acquired knowledge are sought for specialized positions once hired rather than for entry-level positions. The term "Workplace Diversity" in the field of law enforcement has a rather narrow meaning.

Diversity in the police department, especially with race and gender, is by all means a valid and legitimate goal. The conflict that arises with this goal is not its end, but rather its means. When police

departments recruit and screen applicants, every step of the process is exactly the same for each individual regardless of age, sex, race etc. – except one. All applicants are required to take the same written examination within the same time limit; participate in the same oral interview with the same ranking officers where they are scored on the same exact scale as the others; and complete the same training academy upon being hired. The one evaluation that differs throughout the entire process is the physical assessment, which has different standards based upon the sex and age of the applicant. Primarily, the difference between male and female standards is that men are held to a higher standard while women are held to a lower one. This practice is not only unfair to the applicants, but it is unethical in respect to effectively serving the community. By creating a sense of justice for the “disadvantaged” female applicant, a greater injustice is inflicted on the community at-large because citizens cannot expect the same level of service from all officers.

This dual-standard is unfair to the individual applicant based on the ultimate end of what they are all competing for – the same exact job. With two separate standards for the same job, the selected applicants will not perform at the same level of competency. When the servants of the city are at different levels of competency, such as a female officer not being able to meet the minimal standards for a male officer, the community is harmed because they can no longer have a general expectation for police officers; rather, they must have different sets of expectations for policemen and policewomen. The final problem with a division at such an early stage is that it destroys the traditional bond between officers, where the sense of unity or brotherhood is counteracted before officers are even hired. If police departments were to engage in more ethical testing processes by means of total equality and uniform requirements for *all* applicants without exception, there would exist a fair selection process that delivers a greater justice to the overall community.

The solution to fairly diversifying police departments rests in the ancient principles of Plato’s Republic, where Socrates discusses the Just City and the means of selecting effective Guardians. If the

city is to be protected by the strongest guardian force possible, all guardians must be held to the same standard. In Socrates' analysis, there are no specialized positions that require a guardian to be of a certain race or sex; there does not exist the ACLU, NAACP, Feminists, or Diversity Activists. Socrates evaluates guardians based upon their ability to serve their purpose, not based upon which "disadvantaged" one should be given an opportunity out of pity or social justice. Socrates is blind to the individual characteristic of the guardians, just as the guardians should be blind to their own individual interests and desires, because it only distracts them from effectively serving their purpose as protectors of the city. Socrates, book five, discusses how the two sexes must be completely equal if they are to effectively guard the city. They must be held to the same standards and expectations, and must make the same exact sacrifices if they are to be entitled to the same rights and privileges.

Law Enforcement Testing Standards

When police departments test and screen their applicants, the purpose is to evaluate the individual's ability to perform the job and predict if they will be able to succeed in meeting the physical and mental demands of police work. Tests are designed to mimic the work environment, where both general and specific abilities are measured. Many departments use the Cooper Fitness Standards as the baseline expectations for applicants, however, other departments have tests that are tailored more to their duties such as obstacle courses or swimming and water rescue tests. These tests are purposely designed to evaluate the applicant's ability to meet the demands of an officer for that department, where the expectations of the community are reflected in the standards. For example, if a city has coastline, the community would expect that police officers and other public servants would be able to help them in a water-related emergency, and thus the applicants are tested in their ability to swim and/or perform a water rescue. The testing standards may differ across communities, depending on the expectations and duties of police officers, however, when applicants are competing for the exact same job with the exact same duties and expectations, they should be evaluated by the same standard.

The Cooper Institute, through research and development, has devised the “norms” of physical fitness for public servants, which have been adopted and altered as necessary by law enforcement agencies.¹ The Institute reasons that physical standards are essential for screening applicants for public safety jobs since it will predict “the ability of officers to perform essential functions of the job”² as well as avoid negligence lawsuits that would be taken against the agency. The purpose of this preliminary screening process is to evaluate the ability of individuals to perform the duties of the job. The testing standards are designed to mimic the work environment, where the intent of the standards is to imitate the physical requirements of the essential duties of a police officer. Several public safety studies show that there are up to thirty physically strenuous tasks that are related to and essential to the effective performance of public safety duties. “Tests [and] standards cannot discriminate against protected classes”³ such as females, minorities, or the handicapped as outlined in the Civil Rights Act and the Americans with Disabilities Act. However, when “job relatedness is established and documented, then the fitness tests, standards and programs *can* discriminate against anybody. It is important to implement tests/standards/programs that do discriminate between those *who can and cannot do the job* regardless of age, gender, race, or handicap condition.”⁴ The Cooper Institute for physical fitness standards states that it is legal to discriminate based upon standards in the effort of furthering the legitimate interest of having qualified and competent applicants. By this rationale, lowering the standards for women will discriminate for a different reason and actually do the opposite – they will not be equally qualified to do the same job.

When police departments post a job opening, there is one uniform job description listed for the position of “police officer,” rather than a job description for “policeman” or “policewoman.” For example, the Las Vegas Metropolitan Police Department has one uniform description describing the

¹ See *Appendix for chart of sample standards.*

² Cooper Institute, 1.

³ Cooper Institute, 2.

⁴ Cooper Institute, 2.

duties of a police officer. Members of both sexes “must have the dexterity to fire a handgun; strength to subdue persons; stamina to sit, stand, or walk for long periods of time; and the tolerance to work under adverse conditions.”⁵ The essential functions of the job are not relative to the sex of the employee, thus there is no legitimate reason that the screening process be relative to the perceived “inequality” of the individual. There is no different expectation once an individual is on the job, therefore there is no reason for the expectations in the screening process for that job to differ.

Since the responsibility of a police officer encompasses certain requirements, there is a legitimate reason to discriminate against individuals who would either not be able to do the job or have extreme difficulty in the effective performance of their duties. A police department may discriminate against a handicapped individual, such as an amputee or the blind or deaf, due to their physical inability to perform the duties of the job. Many police departments also have certain vision and hearing requirements that must be met.⁶ These are legitimate reasons to discriminate against and not hire an individual because their inability to effectively do the job will have a negative effect on the community they serve. In light of the physical standards, the belief of the police administration is that women are seen to be the “weaker” of the two sexes, and thus must be treated proportionally in respect to their disadvantage. The same argument, however, would not be acceptable if it involved race.⁷ Stereotypically, persons of African descent perform better in the task of running as opposed to Europeans. Would it be acceptable to have a lower standard for the “disadvantaged Anglo-Saxon applicant” because he is seen as weaker? No. For the same reason, the same principle be not reasonable when it comes to the relative strengths and weaknesses of the sexes.

⁵ <http://www.lvmpd.com/employment/hiring.html>

⁶ <http://www.lvmpd.com/employment/vision.html>

⁷ See the rulings in the cases *Gratz v. Bollinger* and *Grutter v. Bollinger*, where the courts define how an inherent quality such as race, may or may not be used as an advantaging factor.

The Socratic Analysis

The ethical solution to this unethical testing practice lies in the ancient writings of Plato's *Republic*, where in Book V Socrates changes pace from the previous books and begins a significantly more controversial discussion with his audience where he describes in three increasingly appalling waves the destruction of societal traditions. He disclaims at various points throughout the conversation that his proposal could not realistically work in any political society and that the idea of a completely just and unified city can only exist in a theoretical framework. He also states that such perfection of justice, freedom, and equality can only exist in one place – the soul – since in any political system, man becomes a possession of the state. The principle behind Socrates' argument is to detach all individuals from personal possession. Whether it be the possession of individual characteristics and identity, material objects and land, marital love and companionship, or even the love shared by the family, Socrates believes that such things only distract the individual and harm the city. By dividing the applicants into separate groups with different standards, it adds a sense of individualized interest on the part of the state, which creates the potential for the guardian to reciprocate such interest in the future. When guardians have a sense of individualism or attachment to things other than the city, their attention may be redirected from protecting the city or provide alternate interests that a guardian may wish to preserve such as material objects or loved-ones. In book four, it is determined that guardians are not to have private ownership of property or land. The reasoning behind this is that they may favor their own interests over the interests of the city. For the same reason, they must be completely detached from other personal interests such as love of a spouse or love of the family. The only love they are to have is for the state – like a sense of patriotism.

Despite his disclaimer, fair and ethical testing standards for officers are a feasible goal when following Socrates' first wave of the equality of the sexes. Socrates states that men and women, as guardians of the city, are to be as equal as possible. There is to be total equality between both sexes if

there is to exist true equality. This total equality is essential in order for the city to function properly. Although Socrates claims that such a thing is not realistically possible, he does state that it would be the ideal solution. Socrates states that the two sexes, in order to have completely equal rights (as guardians) must make completely equal sacrifices. Socrates states that in order to be truly equal, “men and women must share all pursuits in common,”⁸ where neither sex is treated differently. “Having selected them in the same way ... with natures as similar as possible,”⁹ “they must guard and hunt together like dogs, and insofar as possible have everything in every way common.”¹⁰ The reasoning for this complete equality is based upon the logic that if both a man and a woman are by nature fit to be guardians, they are to share in the same expectations. “A man and a woman whose souls are suited for the doctor's art have the same natures,”¹¹ and should be seen strictly as doctors where their expectations and qualifications should not differ, which should also hold true for law enforcement. However, “a man doctor and a man carpenter have different [natures],”¹² and should be treated differently in respect to their expected duties and responsibilities, much like having separate evaluations for police officer and firefighters or for a patrol officer and a Deputy Chief.

Socrates states that rights are based upon sacrifice, and battle is the ultimate of all sacrifices. As discussed in previous books of the *Republic*, war is both inevitable and essential for a healthy society. Soldiers like Polemarchus would have no purpose if not for war. By this rationale, if men and women are to share equal rights in their guardianship of the city, they are to make entirely equal sacrifices. He argues that if women are to be used “for the same things as men, they must also be taught the same

⁸ 457C, Pg 136.

⁹ 458C, Pg 137.

¹⁰ 466D, Pg 146.

¹¹ 454D, Pg 133.

¹² 454D, Pg 133.

things.”¹³ The sacrifice that Socrates specifies is modesty, since it is boldness that will succeed in battle and modesty that will fail.

The ultimate goal that Socrates tries to achieve through his destruction of the inequalities between men and women is to rid them of all personal attachments and interests in order to get them to focus on the needs of the city. The guardians are to be seen as a unified entity with the common interest in protecting the city. The expectations of the guardians are to be exactly the same for both men and women since they are both performing the same job and are expected to perform the same duties. Symbolically, they wear the same exact uniform which is designed to strip them of their personal attachments to their own beliefs and lifestyles, and unify them into carbon-copied servants with the same duties and responsibilities. Socrates’ ultimate goal is to “destroy the private realm in the name of public devotion.”¹⁴ Women “are to belong to all these men in common, and no woman is to live privately with any man,”¹⁵ where there is no individual ownership of men and women, but rather the community ownership of these “soldiers” by the city.

The uniform could be compared to Socrates’ image of both sexes exercising together in the nude where they are stripped of identifying characteristics. The clothing is removed as it is a symbol of modesty. Such modesty is indicative of love and the privacy of the body, which is destroyed when the women are stripped of their clothes. This stripping transcends the gender differences, where women lose their identifying characteristic and become more like the men, specifically in boldness. They will be “clothe[d] ... in virtue instead of robes, and they must take common part in war and the rest of the city’s guarding,”¹⁶ just as the men do. He proposes that in order to create total equality, there must be a total shift from the weaker sex to the stronger rather than a middle ground of compromise between the two, meaning that the women must meet the standards of the men. In order for the city to have effective

¹³ 451D, Pg 130.

¹⁴ Habib, Dr. Khalil. INR-511, Spring 2009, Salve Regina University, Newport, RI.

¹⁵ 457D, Pg 136.

¹⁶ 457A, Pg 135.

guardians while including both sexes, the practical decision would be to require all to meet the standards of the stronger since any other option would essentially weaken the overall strength of the city.

Socrates sees that modesty is the sacrifice that must be made by both sexes. Since men have little to no modesty by nature, this pertains primarily to the women and is seen as a quality of weakness in respect to the battlefield. Socrates chooses modesty because it implies a distinction between public and private. According to Socrates, private love is in conflict with the public good, and this he subordinates private the private love between a man and a woman to the public love of the state through the destruction of the foundation of the private realm – modesty. Modest women believe in the love for their husband, where their body is solely the possession of him. By being stripped of their clothing and their modesty, their body becomes liberated from the possession of their husband, and the marital bond of love is destroyed. They “are to belong to all these men in common, and no woman is to live privately with any man,”¹⁷ where there is no individual ownership of men and women, but rather the community ownership of these “soldiers” by the city. This destruction of modesty and ownership destroys the root of marital love and the related things that come with it. Since a woman’s body and the value of marriage are no longer sacred, the act of sex becomes a meaningless indulgence for physical pleasure. Intercourse becomes detached from love where the bond between man and woman disappears. Since there is no value to the act of procreation, that which follows it is also meaningless, specifically birth and the emotional attachment between mother and child. Sex is later reduced to not only pleasure but for purpose: the eugenics of breeding the strongest guardians for future generations, where a mother does nothing but birth the child and is then detached, both physically and emotionally. Socrates uses the example of breeding gold souls with other gold souls in order to achieve a purebred bloodline of the strongest warriors for the benefit of the city, which reflects why a police department

¹⁷ 457D, Pg 136.

should be more interested in hiring the strongest and most competent officers rather than playing a numbers game with diversity.

Once the love between man and woman is destroyed, the foundation of the family also disintegrates. If there is to be equality between the sexes, there is no possibility for the family to exist since the family consists of two main things: the personal interest and love for one's own and the respective roles and responsibilities of each sex. Men and women are blind to their differences and detached from personal ownership of other individuals. Any aspect that is personalized for an individual or group only rebuilds the notion of family and strengthens the divisions between a group that should ideally be unified. When Socrates destroys the family, he destroys any attachment to the personal love traditionally shared by a family, where it is replaced by a noble lie from the rulers that everyone is a brother or sister of the city. Men and women share no emotional attachment to each other or their offspring. Children will also "be in common, and neither will a parent know his own offspring, nor a child his parent."¹⁸ Since sex has become nothing more than a physical pleasure with no meaningful aspects other than to breed the strongest for future generations, people do not pay attention to who their children are which creates a sense of anonymity within the community. This equality between the sexes is attained through destroying the individuality between them and liberating love and modesty from the act of sex.

Since sexuality belongs to the family, the love of the family crumbles when the *act* of physical love to create the family becomes meaningless. Socrates insists that the family must also be destroyed in order to detach the guardians from any personal interests or desires. If a soldier does not have to be concerned with the attachment to his family, he will be more useful to the state and community when in battle. Personal interests regarding his family will be replaced by a personal interest in preserving the "family" of the state. With sex being meaningless and the bonds of family being broken, no citizen

¹⁸ 457D, Pg 136.

knows their parents or their children and therefore cannot have any personal interest in protecting certain individuals. This anonymity of relatives actually provokes the guardians to protect the entire city equally because of the possibility that any individual in the city could be their relative; “for there are two guardians hindering him, fear and shame: shame preventing him from laying hands as on parents, or fear that the others will come to the aid of the man who suffers it, some as sons, others as brothers, and others as fathers.”¹⁹ The entire city, through this anonymity, is transformed into a new kind of family. The only family that a soldier can now come to the defense of is the city.

The philosophical reasoning for the community benefit of total equality of the sexes is clear in comparison to law enforcement. Police officers are nothing more than the modern-day guardians of the city, whose interest is not their own benefit but those of the community they serve. The idea of equal sacrifice (testing standards) in order to obtain equal rights (same job) is founded on total equality. This ancient principle for the ideal and just city seems to have been overlooked by contemporary city officials where their efforts of delivering the abstract notion of equality to the individual has counteracted the purpose of public service agencies resulting in a lower sense of safety in the community.

The Contemporary Ethical Analysis

Having laid the foundation of the philosophical view as to why the different standards are unfair and unjust, the same principle can be evaluated by the five principles of ethical thought. All five principles – the rights approach, fairness approach, virtue approach, common good, and utilitarian approach – all demonstrate how the individual interest, although valid in certain cases, is ultimately outweighed by the interest of the community as a whole and thus the dual standard for men and women in law enforcement screening is unethical.

The Rights Approach focuses on the rights that are inherent in human nature, where ethical decisions are those which preserve the natural rights and unethical decisions are those which violate

¹⁹ 465B, Pg 144.

such rights. From this approach, the different standards of testing can be seen as unethical based upon the unfair protection of the right to life for both the citizen and the officer. In the field of public service, a servant must put personal interests aside for the benefit of the community. In public safety, be it police or fire services, the right to life and freedom from bodily injury is usually sacrificed since the individual may be required to risk or give their life to save others. When men and women are held to different standards in the evaluation process, yet held to the same standards when they are on patrol, their lives are not equally protected. Since women are evaluated on a lesser scale, the department is negligent in evaluating their ability to protect themselves at the same level when assaulted in the same manner that male officers would be. For example, a criminal will not fight a female officer with a lesser degree of resistance and a male officer with a higher degree; they will simply fight the *police officer* with the same level of resistance. From the perspective of the citizen, their right to life and freedom from bodily injury is not equally protected because there is not a uniform expectation of the responsibility of a police officer. If an individual is being assaulted, the female officer who was required to overcome a lesser level of resistance in her evaluation will be less likely to overcome the assailant in comparison to the male officer, creating an injustice to the citizen when their life is not equally protected by all members of the police force.

The Fairness or Justice approach is founded on balancing the inequalities between individuals in order to level the playing field where each individual has an equal opportunity. This principle is seen in affirmative action efforts, where the “disadvantaged” party is compensated by scaling their results in proportion to the scores of the stronger. This principle also has philosophical roots, both ancient²⁰ and contemporary.²¹ This principle is founded on the idea of “treating equals equally and unequals unequally in proportion to their inequality.”²² This principle both functions and does not function in law

²⁰ Aristotle, *Nicomachean Ethics*. See Gibson, Kevin. *Business Ethics*, pp 87-91.

²¹ Rawls, John. “An Egalitarian Theory of Justice.” See Gibson, Kevin. *Business Ethics*, pp 33-38.

²² Adler, Mortimer J. *Six Great Ideas*. p 176.

enforcement depending on where it is used. In respect to treating officers differently based upon their rank, there is a justification; however, to treat them differently during the testing process when they are competing for the same position, it is not.

The proportion argument is often used in law enforcement hiring as a balancing act in conjunction with affirmative action, where the goal of the police department is to increase the number of women or minority officers. Proportional treatment may create equal employment opportunities, however it is unfair to the individuals who are qualified to meet the higher standards. This unjustified discrimination imposes burdens on people who are no different from those whom are not subject to the same burdens, which is unethical. The diversification of a police department may be a valid goal, however, it deviates from the purpose of a public service agency. Although to have one absolute standard for both sexes would “demonstrate [an] adverse impact, especially against females,”²³ there is a greater concern in protecting the community by having competent officers than there is in creating a diverse department. The average citizen would prefer the strongest and most competent officers during a time of emergency rather than a diverse group of lesser qualified officers.

Unequal treatment of officers can be justified when considering the sacrifice that they make. In respect to the Socratic principle that equal rights are attained through equal sacrifice, if an officer sacrifices more, they are entitled to more rights. An example of this justified unequal treatment would be paying a police Captain more than a Cadet. Since the Captain has more responsibility and duties (sacrifices), he is entitled to the right of greater pay and other benefits.

Considering the reason why unequal treatment *is* justified, the answer as to why unequal treatment in the testing phase is unjustified and thus unethical is revealed. When officers are competing for the same exact job with the same exact responsibility, authority, and benefits (which would be considered “rights”), they should, by this principle, be making an equal sacrifice. If one group of

²³ Cooper Institute, 7.

applicants is held to a lesser standard, they are entitled to lesser rights. This can be seen with reserve police officers. These officers do not complete the full-length police academy, and as a result, they are entitled to a lesser degree of authority and police power. Reserve officers are held to a lesser standard than full-time officers, and thus are given rights in proportion to their sacrifice. By this principle, if women are held to a lesser standard, they should be given less authority. Additionally, it is not fair to deny a position to a man who falls above the female standards but below the male standards since he is still competent to do the job according to one set of standards.

To give one group of applicants lesser authority than the other in order to satisfy the proportion argument and give people rights based upon their sacrifice, the police department would not be fulfilling its goals to hire competent police officers. Falling back on the Socratic argument of raising the standard to the level of the strongest, it would be ineffective to hire women who were not as capable as men in their police powers. Although fair to women by means of equal opportunity through lesser standards and fair to men in respect to the proportionality of rights to sacrifices, the community would essentially be harmed, or at least not properly protected, if the guardian force was not as strong as it could be.

John Rawls supports the principle of proportional equality in a more contemporary philosophical view. His theory does work in respect to creating a justice for the "disadvantaged" individual as well as treating officers of different rank in proportion to their responsibilities. This theory, however, fails to function in the testing process because the interest of the stronger (the community) outweighs the interest of the individual. Applicants are competing for the same job, with the same responsibilities, and thus are solely seen as individuals competing to become a police officer. In the field, the only inequality between officers is their rank, where both unity and their position are symbolized by their uniform.

Not only is it unfair to treat male and female applicants differently when they are held to the same standard in the field, for the same reason it is unfair to the community. Every citizen is equal in the

eyes of the law; when the police have different expectations for applicants while the community has a single expectation for all police officers, it creates an injustice to the victimized civilian when certain officers cannot perform their duties. A citizen's life has no proportion in the line of duty, therefore they cannot be treated differently. When treating the applicants differently, there is a domino effect that travels down to the level of the citizen. Since citizens are the recipients of an officer's duties, such as protecting them, if the person who is responsible for protecting that individual has been treated proportionally, the level of service or protection for the citizen has also been proportional. It is not fair to a citizen when a female officer arrives on scene that cannot protect him when, had the officer been held to the male standards, she would not have had a problem. When the police department expects proportional achievements by officers, it results in the citizens being treated in proportion to the inequality not of themselves, but of the *officer*. This would violate the fairness approach since an individual is not being treated in proportion to their own inequality, but rather in proportion to the inequality of someone else.

Another reason as to why the Fairness Approach would not function in the police officer selection process, is because no other test allows for individuals to be treated in proportion to their inequality – it is only the physical test. The only justified inequality that may exist between the applicants is their own individual accomplishments such as education, skills, and experience. This is justified because it was done by the individual to improve themselves and exceed the minimum standard – the department is not lowering the standard for individuals. The individual is raising their qualifications, just as if they were in better physical shape than the rest of the applicants. The physical requirements of a public safety profession are the most important of all the skills, yet ironically, as concrete as their need is, the standards are not. An individual with a learning disorder should, according to the fairness approach, be given extra time due to his or her academic disadvantage. To deny an applicant with ADHD extra testing time would not be considered discrimination because the job-related

goal of the test is to measure the ability of an officer to make quick, intelligent decisions in the field. An officer would not be given extra time to decide whether or not to pull the trigger based on his learning disability; thus by this rationale, there is no valid reason to give women an extra three minutes in the running test²⁴ since she will not have any extra time to catch the fleeing criminal when on the job. If the female standards determine that the job can be done effectively at that level; thus, any male who can meet these standards can effectively do the job. Having a higher set of standards for men only disqualifies those who are actually able to do the job according to the minimum standards.

From the Virtue Approach to ethics, it can be seen that any public service agency, especially a police department, requires virtues. Without them, a police department would not be able to fulfill its purpose in protecting citizens and maintaining order. A police department must have integrity, courage, honesty, fairness, and self-control. Without such virtues, the department would commit an injustice to the community they serve. Each and every officer must possess these qualities in equal amounts. A male officer and a female officer are both expected to be equally honest in court, equally courageous in risking their own lives to save others, must both have the same degree of self-control, and must also be equally fair to all citizens. The department is hypocritical and violates the virtue approach when they expect officers to be fair after they have been treated unfairly by the department. In addition, the honesty of the department is also compromised in respect to the noble lie of equality, when the phrase “all persons are created equal” becomes questionable.

The last two perspectives, the Common-Good and Utilitarian approaches, tend to overlap. These approaches focus on what brings the maximum benefit to the maximum amount of people. As seen in why the other approaches will not work, the only way to reach these maximums is to have completely equal testing standards and expectations for *all* officers of the law, regardless of their individual characteristics. There is a greater interest in bringing justice to the city than there is in bringing justice to

²⁴ See Appendix – Sample Chart of Fitness Standards.

the individual. From the common-good approach, what is just depends on what is better for the community. From the utilitarian view, the same principle is achieved with weighing the two evils where the just decision is to do what will result in a lesser injustice. The injustice to one, the female applicant who is held to the same challenging standards, brings a greater justice to the community when they have equally competent public servants. Similarly, the interest of a diverse department is outweighed by the interest of a competent department. Simply stated, what occurs is justice through injustice.

If not with Race, Why with Sex?

The argument of discrimination in respect to an applicant's sex is quite similar to the case of *Grutter v. Bollinger*, where race was used as a plus factor. The principle of this argument that parallels this is that 1) people cannot be treated equally when there is a plus factor involved, such as how everything else in the testing process is equal except the physical standards because women are seen as being more fragile and thus should have some advantaging factor to compensate them for this "shortfall"; and 2) Justice Thomas' reasoning from his dissent on people seeing it as a pity case, where women may be held to a lesser standard, like blacks in the college application process, because they are incapable of reaching the standard on their own. Thomas stated in his dissent, quoting Frederick Douglass: As Douglass stated almost 140 years ago, "... if the negro cannot stand on his own legs, let him fall also. All I ask is, give him a chance to stand on his own legs,"²⁵ there is no need to set a handicap for other races. Such an advantage is almost implying that certain races are more unlikely to meet the minimum qualifications and require a bonus to compensate for such a deficiency – which in itself is untrue. If all who met the minimum requirements were accepted, the diversity "end" would achieve itself through the inherent means of natural, unbiased causes. The same principle parallels the idea of special consideration for the sexes.

²⁵ Katsh, M. Ethan. *Taking Sides: Clashing Views on Legal Issues*. New York, NY: McGraw-Hill, 2008, p376.

Conclusion

Contemporary police departments across the nation today are plagued with the challenge of playing a numbers game in balancing diversity while simultaneously trying to guarantee their citizens the quality protection they deserve. The American public desires to see more women and minorities in the workplace, especially in the public sector such as law enforcement. In the selection of police officers, police department administrators must take into account the desires of the community they serve, such as increasing the department by a certain percentage of “disadvantaged” persons, but they must also remember the purpose of their agency: indeed they must serve the public and fulfill their needs and desires, but they must also *protect* that public. When police departments let their *service* outweigh their *protection*, they will not be able to effectively do their job. Diversity statistics are aesthetically pleasing to the public, but are equally comparable to flashy uniforms or highly decorated police cars – no matter how pretty the department looks, it is only as competent as its resources. A freshly painted police car may look pleasing, but it serves no purpose if the engine does not run. Similarly, the officers may visually appeal to the community because there are women and minorities on the force, but if those women and minorities cannot effectively do the job because they were held to a lower standard, they are nothing more than the fresh paint on the engineless police car. They cannot serve their true purpose to the standard that the community expects.

The three waves of destruction as proposed by Socrates create the foundation for an ideal society. Through total equality of the sexes and no personal attachment to individuals, factions, or material possessions, the love of the guardians is only attached to the city they serve. Socrates proposes almost a communist or socialist theory where the individual has no value and their purpose is to benefit the state as a whole. However, the totality of equality is not possible in the contemporary view, and it is easily understood why Socrates disclaimed this at the beginning of his speech. The principle of equal sacrifice in the contemporary view has shifted from Socrates’ meaning of totally equal to the idea of

proportion. Individuals are treated differently in an effort to reallocate resources (strengths and weaknesses) in order to create an illusion of equality. Rawls discussed this principle where individuals are to be treated equally in proportion to their inequality in order to create a balance. Socrates' argument is founded in the fact that there are equal expectations for all guardians, man or woman, where a "proportion" would only create weakness in the overall strength of the guardians. Socrates theory of total equality among the sexes would essentially detach individuals from personal interests and greatly benefit the unity of the state.

After reviewing each ethical approach, it can be seen that although treating applicants in proportion to their inequality may fulfill legitimate interests, the interest of protecting the city as best as possible outweighs any other interest. In order for the city to have the best possible police force, where all officers are expected to perform to their maximum ability which exceeds the minimal expectations of the citizens. Officers, as guardians of the city and brothers and sisters of the law, should be held to the exact same standards since there is no inequality in the line of duty. Every officer is expected to apprehend criminals, defend themselves, and protect the civilians. Every civilian's life is equal in the eyes of the law and should be equally protected by the law and its officers. When male and female applicants are treated differently in the selection process yet treated the same on the street, not only does an injustice occur to applicants who are equally qualified, a greater injustice occurs to the community that depends on the ability of all officers to defend the city and its inhabitants from harm.

Police departments can engage in police officer selection testing in fair and ethical ways if they focus on the purpose of their job. The purpose of a police department is protect the community, not to be diverse. By taking the most qualified applicants, the department will have the best of both worlds because diversity will exist among even the qualified applicants. If police departments were to treat all applicants equally, regardless of any inherent quality, where the only proportion that may exist between them is the advancements they have voluntarily acquired for themselves, the testing process would

become fair, police departments would have both a competent *and* diverse workforce, and the community would be protected by the most qualified guardians.

Appendix A

Sample Fitness Standards Chart for the US Marshal Service

Male Standards:²⁶

Fitness Category: Age 20-29					
	% Body Fat	Sit and Reach	Push-Ups	Sit-Ups	1.5 Mile Run
Superior	<5.3	>22.9	>61	>54	<8.14
Excellent	5.3-9.4	20.5-22.9	47-61	47-54	8:14-10:16
Good	9.5-14.1	18.5-20.4	37-46	42-46	10:17-11:41
Fair	14.2-17.4	16.5-18.4	29-36	38-41	11:42-12:51
Minimum	15.9	17.5	33	40	12:18
Poor	17.5-22.4	14.4-16.4	22-28	33-37	12:52-14:13
Very Poor	>22.4	<14.4	<22	<33	>14:13

Female Standards:²⁷

Fitness Category: Age 20-29					
	% Body Fat	Sit and Reach	Push-Ups	Sit-Ups	1.5 Mile Run
Superior	<10.9	>24.4	- - -	>50	<10:48
Excellent	10.9-17.1	22.5-24.4	>24	44-50	10:48-12:51
Good	17.2-20.6	20.5-22.4	20-24	38-43	12:52-14:24
Fair	20.7-23.7	19.3-20.4	14-19	32-37	14:25-15:26
Minimum	22.1	20.0	16	35	14:55
Poor	23.8-27.7	17.0-19.2	9-13	27-31	15:27-16:33
Very Poor	>27.7	<17.0	<9	<27	>16:33

²⁶ http://www.usmarshals.gov/careers/fitness_men.html

²⁷ http://www.usmarshals.gov/careers/fitness_women.html

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