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# A PROBLEM-ORIENTED APPROACH TO PREVENTING SEX DISCRIMINATION IN POLICE RECRUITMENT

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by

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**Abstract:** *This paper examines the utility of applying situational crime prevention measures to sex discrimination problems in police recruitment. Discrimination against disadvantaged groups such as women is now a "crime." In some jurisdictions, the offence extends to lack of active support for women. Traditional masculinised characteristics of police departments put them at risk for this type of offending, and a variety of courts have found police departments guilty of discrimination. To address the problem, a situationally oriented, problem-based approach is needed that builds on discrimination-reduction strategies that have already shown some success. The examples of pre-entry physical ability tests, firearms handling tests and interviews are used to illustrate the benefits of highly specific modifications in selection processes.*

## INTRODUCTION

Situational crime prevention was initially developed with a focus on direct predatory crime (Cornish and Clarke, 1986; Clarke, 1992; Clarke and Felson, 1993). Since then the range of crimes addressed by situational measures has greatly increased. Sue-

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cessful applications have extended to congestive "cruising" by teenagers in city streets (Bell and Burke, 1992), disorder at motorcycle races (Veno and Veno, 1993), vehicle speeding (Bourne and Cooke, 1993) and suicide (Lester, 1993; Clarke and Mayhew, 1988). Sex discrimination, in the case study conducted here, represents an area of white collar crime amenable to prevention through a situational approach. As in other cases of crime prevention, sex discrimination has been reduced by measures that utilise elements of situational prevention without an explicit knowledge of the theory (Clarke, 1992; see Scherdin, 1992). The contribution of situational prevention in this context is to identify successful strategies and build them into a more systematic model for ongoing management. Despite the existence of numerous success stories, there is a great deal of room for improvement. One alternative is to apply the problem-based (or action research) element of situational prevention (Clarke, 1992).

### **THE OFFENCE**

In the U.S., sex discrimination became an offence with the passage of the 1964 Civil Rights Act (Title VII). The scope of the legislation was widened in 1972 by the Equal Employment Opportunity Act. Other countries introduced similar legislation in the 1970s and 1980s, and anti-discrimination legislation has now become a standard element of social justice legislation in progressive countries. The main prevention mechanism under such legislation has been the threat of civil suit or public prosecution with consequential damages payouts, reinstatement orders or orders mandating procedural changes. Compliance has also at times been a criterion in federal funding or government contracts. In some places, such as Australia, further incentives are applied such as the threat of being named in parliament (Braithwaite, 1993).

Many of the crimes that have responded well to situational prevention involve the fairly straightforward commission of an offence, such as breaking, entering, and stealing, or robbery. In these cases, crime prevention can be substantially judged by the extent to which criminal acts are no longer committed following an intervention. In those terms, obstacles to female entry into policing, such as quotas or higher age limits, are clearly discriminatory and have been abandoned by most police departments. With the removal of overt barriers, the percentage of female re-

cruits usually increases from 1 or 2% to percentages in the teens (Martin, 1990; Prenzler, 1994). However, other tests and procedures which produce a "disparate impact" on particular groups create less clearly illegal "discrimination." In these cases the arguments used to justify adverse impact relate to bona fide occupational requirements (Sagatun, 1990).

The ambiguity surrounding disparate impact has been further complicated by aspects of equal employment opportunity (EEO) and a new generation of affirmative action legislation. This legislation is designed to overcome the limitations of relatively passive discrimination legislation by requiring active measures to improve the participation of target groups. This effectively creates a crime of omission — or neglect — on top of the commission of discrimination. Recruiters are made partially responsible for remedying the general discrimination experienced by women in the past, and for the legacy of reduced expectations and confidence that may lower female application rates. Police administrators must therefore make an extra effort to avoid censure or directives from governing EEO commissions or courts. In some cases regular detailed evaluations are required, and the trend appears to be in the direction of mandating this means of demonstrating compliance — part of a wider trend toward more detailed reporting requirements for police (Mortimer, 1994; see e.g., *Equal Opportunity in Public Employment Act*, 1992).

### **PROBLEM-ORIENTED POLICING AND SEX DISCRIMINATION**

Advances in legislation are now placing the onus on police departments to demonstrate fulfilment of anti-discrimination and EEO requirements. Research shows that where departments have a will to advance the position of women they can make substantial progress (Martin, 1990). The strategies suggested are wide-ranging, although their impact is not well-documented. There is some evidence that the removal of pre-entry physical ability tests, the inclusion of women on selection panels, pre-test training, and the existence of a formal EEO administrative structure have a positive impact on female application and recruitment rates (Home, 1980; Weisheit, 1987; Lunneborg, 1989; Warner et al., 1989; Martin, 1990; Hale, 1992).

Police personnel managers committed to fulfilling the requirements of EEO legislation are faced with the task of choosing those

strategies that will have the maximum impact on their departments. To find the best measures, problem areas must be identified and remedial action evaluated for its impact. It is a waste to engage in targeted advertising, for example, if the maximum pool of motivated qualified female applicants has already been reached. Similarly, it may be counterproductive to rely solely on forcing up female entry rates by preferential hiring if this produces high drop out rates and a heavy backlash from the old guard against the new officers.

These scenarios show the need for close scrutiny of specific elements in a discrimination problem utilising the same procedures necessary for effective crime prevention from a situational perspective. The locus of discrimination should be specifically identified, and, where possible, the immediate environment should then be manipulated to increase the efforts and risks of discrimination, and to reduce the rewards (Clarke 1992). "Problenuoriented policing" is of direct relevance here. In Goldstein's (1990) formulation, situationally based crime reduction strategies were developed for implementation by police. Goldstein (1990) emphasised the importance of specificity in analysing problems of crime and disorder, assessing the impact of current policies, widely canvassing alternative responses, and evaluating and modifying new "tailor-made" strategies. While the application of this approach to the crime problem remains imperative (Clarke, 1992; Felson, 1994), it is also necessary for police services to apply these principles to offences such as discrimination within their own organisation.

### **INADEQUACY OF CURRENT KNOWLEDGE**

Although studies analysing the impact of discrimination legislation on policing show the persistence of residual discrimination, frequently the precise processes are difficult to identify. In a major British study, Jones (1986) was unable to obtain reliable data on the ratio of male and female applicants to male and female recruits. She estimated that women made up between one quarter and one third of applicants but just under 20% of recruits. Further investigation indicated that the main source of attrition of women was discretionary bias exercised by local selection panels, but the precise elements of the process could not be isolated.

Articles supporting affirmative action as an effective measure in police recruitment of women are often generally vague about

precise strategies. In the largest U.S. study, Martin (1990, 1991) found that departments with court-ordered affirmative action policies recruited significantly more women than those with voluntary policies. Those with voluntary policies, in turn, recruited significantly more women than those with no policies. There was strong evidence that removing physical ability tests improved recruitment rates for women, but little conclusive evidence emerged about the effectiveness of other measures. Some programs involved fairly simple forms of preferential hiring and some used targeted advertising, but the specific effect of these or other strategies was not established.

In Australia, no police agency regularly collects and publishes statistics comparing male and female application rates to male and female recruitment rates. However, data made available on request show wide discrepancies in recruiting practices. For example, in Western Australia over a three-year period, women made up approximately 25% of applicants but only 16% of recruits. In New South Wales over a four-year period, the figures were 24% and 20%, respectively, but in 1991-93 made up 25% of applicants and 30% of recruits (Prenzler, in press). Most agencies were unable to provide breakdown data or verifiable explanations. When questioned, respondents from academies or personnel sections suggested that the common attrition of women in recruitment was due to the impact of physical ability tests. Favourable selection of women similarly could not be explained. Consequently, there is inadequate information for the evaluation and enhancement of EEO practices.

### **ANALYSING THE ELEMENTS OF RECRUITMENT**

A problem-oriented approach to reducing discrimination in policing would begin by systematising the "common sense" observation (Clarke 1992) that recruitment consists of a series of elements. To be successful in passing through the main gate of recruitment, applicants must pass through numerous sub-gates. Typically these consist of:

- (1) traffic/criminal history check,
- (2) education standard,
- (3) references,
- (4) intelligence test,
- (5) psychological test,
- (6) medical examination,

- (7) physical ability test,
- (8) interview, and
- (9) other tests (e.g., motor vehicle handling, firearms handling) (cf., Gaines and Kappeler, 1992).

Each test can be reduced to smaller elements. Intelligence tests, for example, usually survey mechanical reasoning, analytical ability and memory. Medical examinations can be broken down into eyesight, reflexes, lung capacity, lifestyle risk factors, etc.

In a typical scenario, a police department may have a female application rate of 25% but an intake rate of 20% — despite the fact that overt barriers to women's entry have been removed. It may be that the attrition of women is spread across the numerous entry criteria in operation. However, attrition may be concentrated in one area, or a small number of areas, which can be identified by breakdown data. It may be, for example, that significant attrition occurs in the motor vehicle handling test, indicating that women are unable to control the large test vehicle around one particularly tight corner. Once that fact is established, further research is required to determine whether or not the test is a bona fide work requirement. The results of that enquiry will then determine the degree to which the large vehicle or the tight corner is either indispensable, dispensable or amenable to modifications that produce a more agreeable compromise between EEO and essential employment skills.

A primary clue to identifying a discriminatory element in recruitment would be a test of statistical significance. However, comprehensive evaluation would also need to go beyond simple comparisons of application and recruitment rates. Appointment by merit may have a distorting effect on outcomes. The fact that there is parity between female application rates and female recruitment rates may disguise the fact that women are better candidates and on the basis of merit should be selected at a higher rate (or vice versa). Regular checks on applicants' qualifications would be required to cover this possibility.

Some jurisdictions have already introduced aspects of this kind of evaluation. For example, the affirmative action plan for Troy in New York includes the use of an "applicant flow record," providing: "data for quarterly reports of minority and female applicants and interviews for each job opening and their percentage of total applicants and of total hired by job category. The city will retain records of minorities and females not hired, who inter-

viewed them, who made the decision not to hire, and the written reason for not hiring in order to establish responsibility and the proper audit of the system" (City of Troy, n.d.:10).

Building on requirements like these, a comprehensive situational approach to preventing sex discrimination in police hiring practices would closely resemble Goldstein's (1990) model and would involve the following steps:

- (1) identification of all stages in recruitment,
- (2) collection of statistics comparing male and female application and pass rates at all stages,
- (3) identification of precise location of significant sex-based differentials,
- (4) evaluation of these elements (where there is disparate impact) in terms of merit and occupational necessity,
- (5) modification or elimination of unjustifiable discriminatory elements,
- (6) evaluation of the impact of the interventions, and
- (7) further modifications if necessary.

### **THREE EXAMPLES**

#### **Physical Ability Tests**

The idea that policing involves physical confrontation and is therefore physically demanding has been the major ideological source of opposition to women. Apart from outright quotas, the primary manifestation of this prejudice has been height restrictions that have impacted disproportionately against women. Following the removal of height limits in response to anti-discrimination legislation, numerous agencies have introduced physical ability tests in which women fail at much higher rates than men (Gaines and Kappeler, 1992). The tests represent one of the legal gray areas related to disparate impact. Where some courts have upheld the tests as bona fide, other courts have struck them down (Gaines and Kappeler, 1992). From the perspective of the EEO, the tests have a highly questionable legality in that they make it difficult to fulfill the requirement to actively encourage female entry into the police department. For example, the affirmative action consent decree governing the Los Angeles (CA) Police Department (LAPD) mandated that the physical entry exam was to be abolished if the failure rate for women was more

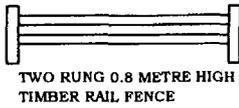
than 50%. In the first year, the failure rate was 64% and the test was abandoned (Felkenes et al., 1993).

One of the most recent cases of the introduction of a pre-entry physical ability test was in the Queensland Police Service (QPS) in late 1993, the same year the QPS lost a case brought by a male applicant rejected because of myopia. Amongst the arguments accepted by the Anti-Discrimination Tribunal was the fact that there were numerous serving officers whose eyesight had deteriorated below the level of the applicant (*Flannery v. O'Sullivan*, 1993). If that precedent alone were applied, it is doubtful that the physical ability test would stand were an unsuccessful applicant to make a complaint (Gaines and Kappeler 1992). Despite this, the test has been retained. A situationally based analysis of the operation of the test reveals a number of options that could be pursued to make the form of physical testing more acceptable under the EEO.

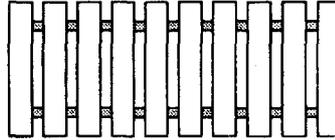
Table 1 shows the combined results for the first two tests conducted for the January and May intakes of 1994. The results include the withdrawal rate, general failure rate, and failure rates per obstacle where there was a significant difference between male and female rates. Completion times are also included. A chi square test was used for sex and age. No significant differences were found for age. The results show significantly higher withdrawal rates for women, and higher female failure rates that can be specifically related to four obstacles where height is the key element of difficulty (see Figure 1).

In the Queensland test the adverse impact on women was not as high as the 50% standard used by the LAPD, but still below the four-fifths (or 80%) pass rule used under Title VII to judge disparate impact in the U.S. (Jordan and Schwartz, 1986). The obvious question then is whether the test is a valid employment eligibility tool. In a review conducted prior to the introduction of the test, it was argued that tests of the kind used are valid models of a typical "backyard chase" faced by police officers as part of their duties (Queensland Police Service, 1993a). The report, however, provided no data on the importance of such incidents in either crime prevention or law enforcement. Maher (1988) has argued that physical ability tests do not accurately reflect real-life foot pursuits. The tests are performed alone when most pursuits

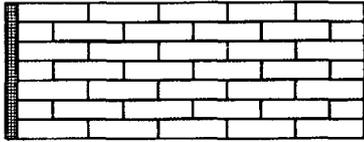
## Figure 1: Queensland Police Service Pre-Entry Physical Competency Test



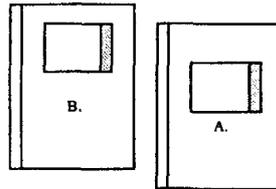
TWO RUNG 0.8 METRE HIGH  
TIMBER RAIL FENCE



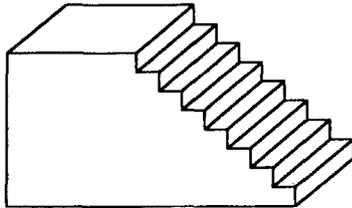
1.65 METRES HIGH PALING FENCE  
(And similar fence, 1.4m)



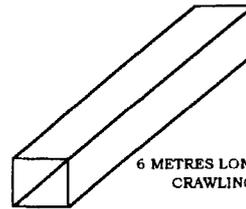
1.5 METRES HIGH SOLID WALL



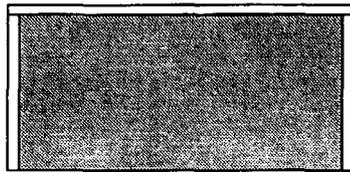
A. WINDOW OPENING 1.0 METRE  
ABOVE GROUND LEVEL  
B. WINDOW OPENING 1.6 METRES  
ABOVE GROUND LEVEL



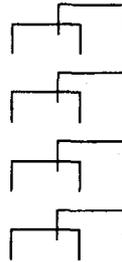
8 STEPS ON APPROACH OF 1.78  
METRES HIGH WALL



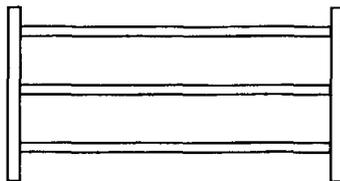
6 METRES LONG AND 0.6 METRES HIGH  
CRAWLING FRAME



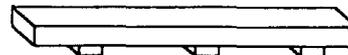
2 METRES HIGH CHAIN MESH FENCE



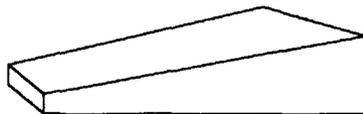
SERIES OF EIGHT AGILITY BARS  
1 METRE ABOVE GROUND AND  
0.7 METRES APART



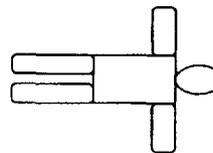
THREE RAIL PINE LOG FENCE 1.75 METRES HIGH



LOW BALANCE BEAM 5.5 METRES LONG



RAMP - 0.43 METRES HIGH



50KG HUMAN SHAPED DUMMY FOR 10 METRES

**Table 1: Results of the Queensland Police Service Pre-entry Physical Competency Test, January and May Intakes 1994**

<b>Applicants</b>		
Total	Males	Females
643	456 (70.9%)	187 (29.1%)
<b>Withdrawal on the day of the test</b>		
Total	Males	Females
131 (23.7%)	84 (18.4%)	47 (25.1%)*
<b>Applicants (following withdrawals)</b>		
Total	Males	Females
512	372 (72.6%)	140 (27.3%)
<b>Failure rates</b>		
Total	Males	Females
62 (12.1%)	9 (2.5%)	53 (38.0%)**
<b>Failure rate per obstacle</b>	Males	Females
1. 1.65m panel wall	2 (0.5%)	27 (19.5%)**
2. 1.5m solid wall	2 (0.5%)	6 (4.0%)**
3. 1.6m window	3 (0.8%)	38 (27.0%)**
4. 1.4m paling fence	1 (0.3%)	6 (4.0%)**
<b>Average time taken to complete</b>	Males	Females
	3.16 mins	4.48 mins*

\*  $p < 0.01$ . \*\*  $p < 0.001$ . Source: Queensland Police Service. Recruiting Section.

involve teamwork, and they do not allow for contingencies that create alternatives routes (such as a nearby gate or objects that can be used to create a step). Maher (1988) also refers to studies showing that hot foot pursuits increase the risk of officer death or injury. Analysis of the test results, combined with Maher's (1988) critique, provide for four main options aimed at meeting EEO goals:

- (1) The test should be scrapped in favour of a health test and subsequent comprehensive training in the complexities of foot pursuits.
- (2) The heights of the four obstacles could be reduced to the level where the significant differences between male and female performances are removed.

- (3) Opportunities could be provided for finding alternative routes through the obstacle course.
- (4) Pre-test orientation could be greatly boosted with formal instruction in techniques for negotiating high obstacles, and with opportunities for practice and assistance well in advance of the test. This is particularly important given the high female withdrawal rate.

Following the 12 techniques of situational crime prevention proposed by Clarke (1992), options 1 and 2 — removal of the test or modification of the obstacles — are possibly best categorised in terms of "increasing the effort." The main effect of the changes would be to make discrimination, intentional or otherwise, more difficult. Specifically, the suggestions belong in the sub-category of "controlling facilitators." In this case, as with many situational interventions, no direct attention is given to the formative development of criminal motives. Instead, interventions are aimed at the tools used to commit the offence. As with gun control, for example, the means to carry out the offence are removed or restricted to either prevent offending behaviour or to reduce the severity of the effects. Option 3 — creating alternatives — could also be categorised this way.

Pre-test programs — option 4 — could be classified in the sub-category of "target removal" (in the category "reducing rewards"). If the targets of discriminatory practices are women, then giving women skills and confidence to challenge discriminatory barriers effectively reduces their vulnerability and therefore their suitability as targets. It is noteworthy here that Poyner's (1993) overview of crime prevention rates "target removal or modification" as the most effective prevention technique (see Clarke, 1992:12-13). If this is seen as a somewhat forced categorisation, then the difficulty might prompt the creation of a further category of situational techniques, such as "arming the victim." This, however, may sound like vigilantism, and the already existing category of "target hardening" might be more appropriate, if somewhat de-personalising.

## **Firearms Handling Tests**

As part of pre-entry testing, many police departments include a firearms handling test. Data on these tests are not generally available, but the lower performance of women in academy firearms training suggests the probability of poor performance in pre-

entry tests. The results of a study by Auten (1989) of measures to improve the performance of women (and some men) in academy firearms training has direct implications for pre-entry tests. Auten found that lack of experience with weapons had a major impact on women's confidence and ability with firearms. Women were much more likely to expect to fail and to be treated less favourably by instructors (Auten, 1989). Physiologically, the main reasons for poor performance related to sight alignment or trigger control. The lower levels of strength, endurance and confidence experienced by women primarily retarded their trigger control. Remedial classes involving gripping exercises and laser-equipped weapons enhanced participants' strength and accuracy. Exposure to firing a weapon with dummy rounds built confidence and sensitivity to the weapon. Furthermore:

Of almost equal importance is the need to insure that the weapon being used by an officer is properly "sized" to their physical dimensions... at the Institute we found that commonly approximately one-third of the officers in a class of 40 will have weapons that are "over-sized," usually the stocks, for their physical dimensions. Sometimes, the results produced simply by changing the stocks on a shooter's weapon border on the remarkable in terms of improvements in marksmanship skills [Auten, 1989].

From a situational perspective, these interventions are probably also primarily about controlling facilitators, especially if a victims' lack of initial confidence and skill are seen as facilitators of discrimination. One lesson of Auten's (1989) study for pre-entry tests is that, like physical ability tests, they might best be abandoned and the focus instead put upon appropriate training, once minimum health standards are satisfied. Alternatively, if recruiters insist on retaining the tests, pre-test classes using some of the strategies employed above should assist women in passing and make the experience less intimidating.

## **Interviews**

Research on women in policing suggests that male discretionary decision making is a key area of opportunity for discrimination (e.g., Jones, 1986). The following report by an applicant to the Belgian police illustrates the kinds of discriminatory criteria and intimidation that have been used against women:

During the meeting, while sitting in front of a table with seven persons, one man was talking continually...The first thing he said was "if we give you an appointment, that would only be for a few years anyway, then you will have children and stay home." He had my c.v. in his hands, in which was mentioned that I have been married for ten years and already have two children. When I told him that my children are 6 and 3.5 years old, he asked what I would do if an urgent call came in while I was giving my child the bottle. He also asked me what I intended to do with my children when on night-duty. But what does a man do with his children when on night-duty?...What question would this gentleman have asked my male fellow-candidates? [European Network for Policemen, 1994:2].

This type of questioning is illegal under most anti-discrimination provisions. However, "illegality" requires that action be taken by either the victim or observers, and this may not happen. Consequently, an effective EEO program must pre-empt this potential problem by close monitoring.

Recommendations for reducing discrimination relating to discretion focus on clarifying criteria, and requiring written and specific evaluations of candidates (Gaines and Kappeler, 1992). A situational approach to discrimination prevention would begin by disaggregating the elements of interviewing and locating the precise sources of discrimination or of disparate impact. Interview reports frequently include criteria such as social skills, community involvement, application to work, knowledge of policing, and presentation and appearance. In one possible scenario, a review of decisions might show that a significant percentage of females were failing interviews because panel members felt that the interviewees had an unrealistic view of policing. Panel members may have felt that such applicants might not be able to cope with the real demands of the job. Once, these applicants were identified, further judgments would then need to be made about the next course of action. A review of the literature might show that initial expectations about police work are unrelated to job performance or length of service. In that case, panels would need to be informed that pejorative judgments about applicants' expectations are inappropriate. Alternatively, promotional material could be expanded to include more on the nature of police work. This could be extended to information classes for applicants. In a related example, under the LAPD's affirmative action program, pre-

application assistance classes are made available to interested persons or previously unsuccessful applicants. The classes have in part been responsible for increases of up to 20% in the appointment rates of females (Felkenes et al., 1993).

Informing interview panels that weightings on certain criteria must be reduced is a form of "rule setting" that works by removing ambiguity and hence the rationalisations or uncertainty that may influence the commission of an offence (Clarke, 1992). This can be done as part of improved training of panel members. Pre-application programs aimed at preparing target groups for interviews by communicating criteria, and developing skills and knowledge, could be seen as removing facilitators or, alternatively, as removing targets.

Another intervention that could be attempted is placing outsiders on selection panels. Apart from introducing decision makers who will be less susceptible to pressure to conform, outsiders could be encouraged to report any inappropriate questioning. This would be a case of implementing "formal surveillance" (within the category of "increasing the risks"). Furthermore, the introduction of police rules mandating reporting of suspected misconduct would extend to police employees on panels. Putting senior policewomen on panels may further assist in fragmenting male solidarity. These moves also constitute techniques for increasing risks, under the sub-category of "surveillance by employees" (Clarke, 1992).

## CONCLUSION

A problem-oriented approach to the prevention of sex discrimination in police recruitment would need to be extended to all aspects of police work in order to guard against displacement of discrimination from recruitment into the workplace. EEO evaluations would need to extend to training, deployment, promotion and retention. Because sexual harassment has been such a prevalent problem in policing (Anderson et al., 1993), it might need to be examined separately (as well as remaining on the checklist when working within the broader elements). Types of sexual harassment and particular locations would need to be identified before situational remedies were attempted. The processes proposed in this case study of sex discrimination could also be extended to EEO programs aimed at other target groups, such

as indigenous people and people from non-English-speaking backgrounds.

In the past, the lack of record-keeping or the need for manual extraction of individual files limited the capacity for the type of detailed analysis proposed here. Advances in computerised record-keeping now make it possible to collect and analyse personnel data much more efficiently and on a regular basis. The means are available to effectively evaluate strategies aimed at creating equality of opportunity. Problem-oriented policing provides a philosophy and a method germane to police departments, and one closely aligned to the proven successes of situational crime prevention. EEO legislation creates a legal obligation. The final ingredient required is the will to achieve on the part of police managers, and a more vigilant exercise of accountability by EEO oversight bodies.



**Acknowledgments:** Many thanks to Cassandra Wyer for data analysis, and to Professors Ronald Clarke and Ross Homel and to Stuart Macintyre for comments on drafts. I would also like to thank the Research Committee of the Queensland Police Service for releasing the results of the pre-entry physical ability tests, and to Inspector Roger Lewis for assistance.

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