



EL DORADO COUNTY GRAND JURY 2010-2011

INVESTIGATION OF GENDER BIAS IN THE SHERIFF'S OFFICE Case Number GJ010-001

REASON FOR REPORT

An anonymously written letter dated May 28, 2010 was forwarded to the current El Dorado County Grand Jury (EDCGJ) by the 2009-2010 Grand Jury. This letter, purportedly written by a Sheriff's Office employee, described a work environment in the Sheriff's Department that was disrespectful and discriminatory to female members of the department. In addition, the public's concern over gender bias in the Sheriff's Department increased when articles appearing in the Mountain Democrat and Sacramento Bee described two lawsuits filed by Sheriff's Department employees alleging sexual harassment. To address concerns regarding gender bias in the Sheriff's Department, the EDCGJ opened an investigation to review related written policies and practices within the Department.

BACKGROUND

In 2010, there were 386 men and women working in the Sheriff's Office. Of this total, 119 were female (30.8%). Of the 184 sworn officers, ten were women (5%). In a study undertaken by the Bureau of Justice in 2003 (the latest data available), the national average of female officers (deputies, sergeants, lieutenants and captains), for communities with a population between 100,000 and 249,000 was 12.8%. El Dorado County (EDC) employed 4.5% females in sworn positions in 2003. The Department's turnover rate for

sworn and civilian personnel (not including retirement) in 2010 for women was 6.7% and 1.1% for men. There were 12 gender bias complaints in 2010, which was twice the number filed in 2008 and 2009 combined.

Nine out of the 12 complaints in 2010 were filed by civilian Community Service Officers (CSO) or sworn deputies. Six female deputies and all eight CSOs were interviewed by the EDCGJ. Areas of concern included the selection process for lateral, specialized assignments and the Internal Affairs investigation process. Some interviewees stated that they would not recommend without reservation, employment with the Sheriff's Office to other women. Almost half of the interviewees indicated that they experienced gender bias at some time during their career at the EDC Sheriff's Office.

METHODOLOGY

1. The EDCGJ conducted the following interviews:

- Six female deputies for El Dorado County were subpoenaed to appear before the grand jury.
- Eight female Community Service Officers for El Dorado County were subpoenaed to appear before the Grand Jury.
- Director of Human Resources for El Dorado County
- EDC Sheriff's Department Support Services Division Commander
- Interim Sheriff for El Dorado County
- Current Sheriff for El Dorado County
- Detective, El Dorado County Sheriff's Office

2. The EDCGJ examined the following written sources during the investigation period of July 1, 2010 through April 30, 2010:

- El Dorado County Sheriff's Office Policy Manual
- County of El Dorado Policy Prohibiting Discrimination, Harassment and Retaliation, and Reporting and Complaint Procedure
- 2007 complaint alleging sexual harassment and gender bias
- Letter of Counseling dated May 31, 2007, subject "Complaint"
- 2009 complaint alleging misconduct of a command officer
- Sheriff's Office memorandums dated June 13, 2009 and June 17, 2009, subject "Complaint"
- Copies of e-mails dated June 4, 2009 subjects "Complaint" and "Inappropriate"
- Letter of Counseling dated September 16, 2009

3. The EDCGJ obtained statistical data from the following sources:

- Website <http://bjs.ojp.usdoj.gov/index> accessed March 14, 2011 regarding statistics on female employment in Sheriffs' Departments
- El Dorado County Human Resources Department
- Telephone inquiries to Shasta, Placer, Amador, King, and Madera counties
- El Dorado County Sheriff's Office, Investigative/Detective Unit.

FINDINGS

1. A total of 18 gender bias/sexual harassment complaints originating in the Sheriff's Office were filed over the last three years. Three were filed in 2008, three filed in 2009 and twelve filed in 2010. Six of the 18 complaints were sustained (found to be true).
2. Of the six sustained allegations, three individuals did not have records of disciplinary action related to the complaints in their files in the El Dorado County Human Resources Office. Of the remaining three complaints, one of the accused retired and one was terminated. The third complaint involved multiple accused employees and the final discipline resulted in one termination, a forty-hour suspension, and a Letter of Reprimand.
3. There are two pending lawsuits filed with the United States District Court against the County of El Dorado, El Dorado County Sheriff's Department, and individual plaintiffs within the Sheriff's Department alleging discrimination, harassment, and retaliation.
4. Operations within the Sheriff's Department are governed by the following:
 - El Dorado County Sheriff's Office Policy Manual
 - Memorandum of Understanding (MOU) with applicable bargaining units
 - County of El Dorado Policy Prohibiting Discrimination, Harassment and Retaliation and Reporting and Complaint Procedure
 - Federal and State regulations outlined by the Equal Employment Opportunity Commission and enforced by the El Dorado County Human Resources Department
5. El Dorado County Sheriff's Office Policy 329, "Discriminatory Harassment", prohibits and defines discrimination, harassment and retaliation.

- Section 329.2 states that “*Employees . . . found to be participating in any form of employment-based harassment, discrimination or retaliation against any applicant or employee may be subject to disciplinary action up to and including termination from employment.*”
 - Section 329.4.1 states that for Department Heads, Management and Elected Officials, “*Failure to take corrective action when a department head/manager/elected official knew, or should have known, that an employee was being subjected to unlawful discrimination, harassment or retaliation on the job is a violation of this policy and may subject the . . . official to a disciplinary action up to and including termination or other appropriate sanctions.*”
 - Section 329.4.1 states that “*A failure to report conduct that may constitute unlawful discrimination, harassment and/or retaliation to the Department of Human Resources (Equal Employment Officer) or CAO (Chief Administrative Officer) . . . may result in disciplinary action up to and including termination.*”
 - Section 329.4.3 states that the Human Resources Director and Department shall be responsible for “*Scheduling and auditing periodic training of County management and employees in the area of unlawful workplace discrimination, harassment, retaliation including identification of prohibited conduct, procedures for reporting the occurrence of such conduct and prohibition against retaliation for complaints.*”
 - Section 329.5.3 states that “*if the determination is made that discrimination, harassment and/or retaliation occurred which violates County policy, the Director of Human Resources (Equal Employment Officer) or CAO (Chief Administrative Officer) shall take and/or recommend prompt and effective remedial action commensurate with the severity of the offenses(s), taking into account the principles of progressive discipline as well as the County’s zero tolerance policy towards unlawful discrimination, harassment and retaliation.*”
6. Forty-two percent (6 of 14) women interviewed by the EDCGJ indicated that they have experienced gender bias at some time during their careers with the EDC Sheriff’s Department. Three women stated they would not recommend employment with the Sheriff’s Department to other women. Two stated that they would recommend the Sheriff’s Department only after they explained the difficult working conditions. Nine said they would recommend the Sheriff’s Department to other women.
7. In addition to the 18 complaints filed since 2008, the Grand Jury examined three sustained complaints that originated from an allegation in 2007 by three male deputies who reported events where females were subjects of gender bias. The El Dorado County Human Resources Office forwarded the complaint to an outside attorney for review. The attorney recommended that three of the reported incidents outlined in the complaint had sufficient evidence to sustain the allegations, specifically stating that one of the comments “*was reasonably understood as a*

8. The above referenced individual was promoted to a command position in 2009 and during his probationary period for that promotion, received another Letter of Counseling for an additional sustained complaint involving conduct which reflects unfavorably upon the Department. Using a Letter of Counseling twice for the same ranked individual does not adhere to section 329.5.3 of the Policy Manual “. . . *taking into account the principles of progressive discipline. . . .*”
9. The Sheriff’s Office Policy Manual states that discriminatory behavior based on gender, ethnicity, religion, and sexual orientation is prohibited. There are no written guidelines for disciplinary action if these policies are violated. When asked if mandatory discipline for violating such policies should be delineated in the Policy Manual to serve as a deterrent, one Sheriff’s Office Commander stated that doing so would take away the discretion of supervisors and managers in assigning punishment.
10. Some of the women interviewed expressed a lack of confidence in Internal Affairs to handle a gender bias complaint. Their concerns included a lack of objectivity, as well as the potential for compromised confidentiality that could lead to possible retaliation by co-workers.
11. Although formal training on rules and regulations regarding Equal Employment Opportunity is given every two years for sergeants and above, no formally scheduled training takes place for sworn and civilian members in the Sheriff’s Department.
12. The El Dorado County Recruitment and Selection section 1000.3.6 lists discipline for acts constituting racial, ethnic or sexual harassment or discrimination as disqualifying for applicants of positions within the County. Section 1000.3.4 also requires that applicants must be effective in dealing with people without arousing antagonism. In at least one promotion the EDCGJ reviewed, an applicant who received a Letter of Counseling for discourteous, disrespectful or discriminatory treatment, was promoted to a command rank two years after he received the discipline.

13. The Grand Jury's review of two sustained complaints found no verification that the Sheriff was informed about the content of the complaint or took part in disciplining the guilty individuals.
14. Although El Dorado County ranks second from the bottom among Shasta, Placer, Amador, Kings, and Madera counties in the number of female deputies with a rank of sergeant or above, the majority of the female deputies did not have any concerns about the process used to promote candidates for sergeant or above. The process involves testing facilitated by an outside consulting company. However, it should be noted as stated in Finding 21, gaining experience to be successful in promoting to sergeant or above is controlled in part by the lateral assignment process. There were four attempts by women to obtain a promotion to sergeant since 2003, and only one woman was successful. Twenty-six men were promoted to sergeant or above during the same time frame.
15. Sergeant openings in the West Slope area are typically filled by sergeants with higher seniority, leaving the South Lake Tahoe position vacant when they transfer. The vacant position is then filled by a newly promoted sergeant with less seniority. This practice can discourage potential candidates with families or other responsibilities rooted in the West Slope to seek promotion.
16. Policy 1001 of the Sheriff's Office Policy Manual defines the process that is used to select individuals for specialized job assignments. All employees are notified via e-mail of job openings, and applicants are ranked by a panel of supervisors within the Department. If the position has three or more candidates, is full time or involves skill pay, only the top three candidates ranked by the panel are invited to compete in an oral interview. After the interviews are concluded and final ranking is tabulated, the panel's numerical ranking is forwarded to the Division Commander.
17. Personnel in the Sheriff's Office provided the following information regarding detective positions:
 - There is no mandatory rotation of detective positions.
 - There are currently 20 male and zero female detectives in the EDCSO.
 - Over the last five years no women were added to the Detective Unit.
 - In 2008, one female detective left the Investigative Detective Unit because she was promoted to sergeant.
 - Detectives receive a 5% pay increase and a take home vehicle, making this a coveted position for deputies.
18. According to the Bureau of Justice Statistics website, data from a 2003 census (the latest available) showed that the national average for the percentage of sworn female officers in communities between 100,000 and 249,000 is 12.8%. The per-

19. In testimony, the Sheriff indicated there are no plans to recruit female deputy applicants to bridge the Department's existing gender gap in sworn positions.
20. Although there is a written policy that defines the process for selecting candidates for lateral assignments, the majority of the six deputies interviewed expressed dissatisfaction with the methods used to select candidates for lateral, specialized work assignments. Concerns include:
 - The selection process was too subjective since most assignments did not involve written testing, relying instead on the ranking of candidates by a selected panel.
 - Not having a chance to appear before the selection panel if they did not receive one of the top rankings.
 - Not getting any feedback or coaching on how they can improve their chances for being selected in the future.
 - The low number of openings due to non-rotation of some assignments such as detective.
21. The Grand Jury finds that lateral assignments such as Detective, Field Training Officer, and River Patrol are a gateway for promotion into the ranks of sergeant or above. In addition, the El Dorado County Grand Jury concludes that the selection process for lateral assignments is subjective and somewhat arbitrary.

Without experience gained from lateral assignments a candidate who applies for sergeant or above has a slim chance of succeeding when competing against a candidate who has detective or other lateral assignment experience. It is not surprising that only one woman achieved the rank of sergeant since female detectives have been almost nonexistent. Having female deputies on the force who have gained experience from lateral assignments also contributes to a more effective and culturally competent law enforcement organization for El Dorado County.

RECOMMENDATIONS

1. The EDCGJ strongly urges the Sheriff's Office to implement the following regarding lateral, specialized assignments:
 - Implement a plan to rotate specialized lateral assignments such as detective with the goal of creating more opportunities for deputies to gain valued job skills while at the same time ensuring that expertise within the Department is preserved.
 - Establish objective means wherever possible to measure candidates' abilities against written job qualifications.
 - Give *all* qualified candidates the opportunity to compete in oral examinations conducted by the selection panel.
 - Consider alternatives to the practice of allowing sergeants with seniority to force newly hired sergeants with less seniority to locate in South Lake Tahoe since it has the unintended consequence of discouraging those with family or other responsibilities rooted in the West Slope to apply for promotion.
 - Provide a venue for unsuccessful candidates to receive feedback from the selection panel.
2. The Sheriff's Office must identify and recruit qualified female and other minority candidates to apply for future openings in the Sheriff's Office. This outreach would enable the Sheriff to take a leadership role in eliminating bias and the appearance of discrimination that exposes El Dorado County to civil liability.
3. The Sheriff's Office zero tolerance policy regarding discriminatory harassment must be better communicated and implemented by:
 - Establishing set scheduling of formal training for all employees on proper workplace behavior.
 - Ensuring that sustained allegations of sexual harassment and/or gender bias discrimination are duly weighed against individuals applying for promotion.
 - Aggressively implementing Policy 329.4.1 advocating disciplinary action for supervisors when complaints are filed in their sphere of influence and it is determined that they "*knew, or should have known, that an employee was being subjected to unlawful discrimination, harassment or retaliation on the job*".
 - Performing a review of Internal Affairs to eliminate perceptions of lack of objectivity and confidentiality.
 - Routing all allegations of sexual harassment/gender bias complaints through Internal Affairs to the Sheriff.

RESPONSES

Responses to both numbered findings and recommendations in this report are required in accordance with California Penal Code §933 and §933.05. Address responses to: The Honorable Suzanne N. Kingsbury, Presiding Judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

This report has been provided to the El Dorado County Sheriff and the Director of Human Resources for El Dorado County for response.

Elected officials under statute are given 60 days to respond, and non-elected officials are provided a 90-day response period from the release date of this report.