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U.S. Commission on Civil Rights

Statement Of The United States Commission On Civil Rights Concerning The Detroit Police Department's Racial Promotion Quota.

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UNITED STATES
COMMISSION ON
CIVIL RIGHTS

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Washington, D.C. 20425

STATEMENT OF THE U. S. COMMISSION ON CIVIL RIGHTS
CONCERNING THE DETROIT POLICE DEPARTMENT'S RACIAL PROMOTION QUOTA

The U.S. Commission on Civil Rights commends the City of Detroit for its desire to eradicate racial discrimination in its Police Department's employment practices and to increase the number of blacks in its police force. However, the Commission deplores the City's use of a racial quota in its promotion of sergeants to lieutenants as one of the methods for achieving its laudable objectives.

The courts examining the validity of the promotion quota concluded that the Detroit Police Department (DPD) engaged in pervasive discrimination against blacks from at least 1943 to the 1970s in all phases of its operations, including the hiring and promotion of employees, job assignments, and the treatment of black citizens. In July 1974, the City voluntarily adopted an affirmative action plan. One of the elements of the plan alters the method whereby sergeants are promoted to lieutenants. Prior to 1974, candidates for promotion who scored a minimum of 70 on a written test were ranked on a single list. Each candidate was accorded a numerical rating based upon a number of factors, including their score on the written examination, length of service, performance or service ratings determined by supervisors, degree of college education or credits, veterans' points, and an oral interview. Promotions were given to the highest ranking candidates on the list in numerical order until all available positions were filled.

The affirmative action plan does not change the basic criteria for determining which sergeants receive promotions to lieutenant. The plan, however, requires that two separate lists be compiled--one for black sergeants and the other for white sergeants. Rank on both lists is determined by use of the same numerical rating system in effect prior to 1974. Promotions are made alternately from each list so that one black officer is promoted for each white officer until 50% of the lieutenant corps is black, an event not expected to occur until 1990. Pursuant to the plan, a number of black sergeants have been promoted instead of white sergeants who would have ranked ahead of them if a single list had been used. The Supreme Court decided last week not to hear the case (Bratton v. City of Detroit).

The DPD's promotion quota is factually similar to one currently at issue in the case involving the New Orleans Police Department (Williams v. City of New Orleans), pending before the full Court of Appeals for the Fifth Circuit. It differs from the Memphis Fire Department case now before the Supreme Court. The Memphis case involves seniority-based layoffs which would reduce the pre-layoff percentage of black employees, a number of whom were hired and promoted following the City of Memphis' earlier agreement to two consent decrees.

In the Commission's view, enforcement of nondiscrimination law in employment must provide that all of an employer's discriminatory practices cease and that any identifiable individual who has been the direct victim of discrimination be returned to the place he or she would have had in the workforce in the absence of the employer's discrimination. Thus, each identifiable victim of the employer's discriminatory employment practices

should be made whole, including the provision of back pay and restoration to his or her rightful place in the employer's workforce at the next available opening. Such relief should also, when appropriate, accord a seniority status to the victim of discrimination higher than that of an innocent employee who would have been junior to the victim of discrimination in the absence of their employer's discrimination (here the innocent third party properly must share the burden of his or her employer's discrimination against identifiable victims in order to afford an adequate remedy to those victims). These kinds of relief, of course, must be available in cases involving a whole class of actual victims of discrimination, as well as cases involving only one such victim.

In addition, the use of affirmative action techniques, as tools to enhance equal opportunity for all citizens rather than as devices to penalize some on account of their non-preferred racial, gender or other status, should also be required of employers found to have discriminated, and encouraged for all employers who wish to improve the quality of their workforce. These techniques include: 1) additional recruiting efforts, aimed at increasing the number of qualified minority (or female) applicants from which the employer undertakes nondiscriminatory, race-and gender-neutral hiring; 2) training, educational, and counseling programs for applicants and employees, targeted to attract minority (or female) participants and to enhance their opportunities to be hired or promoted on the basis of merit (rather than race or gender), but open to all on an equal basis.

"Simple justice" is not served, however, by preferring nonvictims of an employer's discrimination over innocent third parties solely on

preferences merely constitute another form of unjustified discrimination, create a new class of victims, and, when used in public employment, offend the Constitutional principle of equal protection of the law for all citizens. The DPD's promotion quota benefits nonvictims as well as victims of past illegal discrimination in promotions in derogation of the rights of innocent third parties, solely because of their race. Accordingly, it is a device that should be eschewed, not countenanced.

The Commission believes that the use of racially preferential employment techniques, such as quotas, is not properly viewed as a situation pitting the interests of blacks against the interests of whites. Rather, each specific preferential plan favors members of the preferred group--of whatever race or gender--at the expense of the non-preferred group, which inevitably includes persons of diverse ethnic, religious, or racial groups, and sometimes includes females. Members of these groups have often been subject to past discrimination. Thus, in the New Orleans Police Department case, separate groups of Hispanic and female police officers, in addition to a group of white officers, intervened to object to the promotion quota favoring black males.

The Commission also rejects an "operational needs" justification for racial quotas, as Detroit advanced in favor of its promotion quota. The City asserts that it needs to increase black police officers at all ranks, in order to achieve more effective law enforcement and reduce discriminatory treatment against black citizens, and that the promotion quota was a necessary means of meeting those objectives. This justification amounts to little more than a claim that only black police officers

can effectively provide law enforcement services to black citizens or supervise lower-ranking black police officers. Such a claim has no place in a free, pluralistic society made up of many diverse ethnic and racial groups striving to achieve fully the goal of becoming one nation. If accepted, it would justify a claim that members of a racial or ethnic group can be properly served or treated only by fellow members of that group, e.g., only black teachers can teach black children--or that only white teachers can teach white children. This claim would, in the words of Chief Justice Earl Warren, "turn the clock back" (Brown v. Board of Education (1954)) to the "separate but equal" days of the past, when public entities dispensed benefits, entitlements, and penalties of all kinds on the basis of a person's skin color. Such a claim, in short, would ultimately divide the nation rather than unite it.

Among the alternatives to racially preferential employment policies that a police department can use to meet its needs for more effective, and non-discriminatory, law enforcement, include: 1) vigorous enforcement of policies of non-discriminatory treatment of all citizens by its members, including the disciplining or dismissal of offending officers, and 2) provision of training and counseling programs for its officers to instruct and counsel them in the requirements of non-discriminatory law enforcement.

Nearly 25 years ago, Arthur L. Johnson, Executive Secretary of the Detroit Branch of the National Association for the Advancement of Colored People, testified about the poor relations between black citizens and the DPD before this Commission's predecessor. He said, in part, "At absolutely no point in their experience do Negroes in Detroit see the law enforcement agency as being truly color-blind . . ."

Unfortunately, the DPD's use of racial quotas demonstrates that it is still not truly color-blind, at least with respect to its employment practices.

Because the issues in the Detroit case are of such importance, the Commission is disappointed that the Supreme Court has declined to hear the case. The issue of racial quotas in promotions, as well as in hiring, will undoubtedly be presented for Supreme Court review in the future. The Commission hopes the Court will resolve the issue by reaffirming the principle of nondiscrimination and forbidding preferential treatment based on race, color, gender, national origin, or religion in favor of nonvictims of discrimination at the expense of innocent individuals.