

In a Different Force

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ABSTRACT

Highly publicized instances of law enforcement brutality, many captured on video or audio, have prompted calls for reform from many sides. Some departments have attempted to address police officers’ use of excessive force by improving the racial diversity of their departments or by appointing people of color to positions of authority. Yet policymakers and researchers have paid less attention to the possible influence of gender diversity.

Research indicates that, in the aggregate, female police officers approach their jobs differently than men. In particular, while they are equally likely to use routine force, female officers are less likely to use excessive force. Complementing these data, female police officers cost their employers less money in excessive force settlements and judgments. And female officers report more positive views of the communities and individuals they serve.

While policymakers should not rely on either essentializing stereotypes or biological generalizations, the difference in the way that men and women are socialized has real consequences for the way female officers engage in policing activities. Police forces should reconsider traditional obstacles to female officers’ participation and should actively recruit women in an effort to increase the number of women on police forces.

TABLE OF CONTENTS

INTRODUCTION	1552
I. FEMALE OFFICERS	1554
II. FEMALE OFFICERS AND THE USE OF FORCE.....	1556
A. <i>Differences Between Male and Female Police</i>	
<i>Officers</i>	1556
B. <i>Reluctance and Rebuttal</i>	1559
III. PROPOSALS	1561
CONCLUSION	1562

INTRODUCTION

Imagine an America in which half of police officers are women. How would this dramatic shift change the culture of law enforcement entities? How would it affect the way that police officers interact with the communities they serve? And, if police forces had equal numbers

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of male and female officers,¹ how would it affect the ways that police use force against civilians?

This Essay argues that a significant increase in the number of women on police forces across the country would improve the culture of policing and would likely result in a decrease in instances of both excessive force and unnecessary force.² Although the number of women who serve as law enforcement officers has increased in recent decades,³ relatively little recent research has examined how the presence of women has changed policing and could change it more. Older research has discussed the changing gender demographics,⁴ as well as the problems caused by toxic masculinity in police forces,⁵ but legal scholarship has not focused on the possibility that a shift in the demographics of police forces could cause a shift in policing practices.⁶

The Essay proceeds as follows. Part I describes the current status of women in policing. Part II discusses evidence indicating that women are less likely to use excessive force and considers why the idea of increasing the number of women in policing has not gained more

1 Throughout this Essay, I use the adjectives “male” and “female” to characterize police officers. I make this decision reluctantly, because I am generally talking about gender, not sex, and in many instances the words “women” and “men” would be more accurate. For example, many trans-women do not identify with the “female” categorization, and such individuals exist among the ranks of police officers. But I have chosen the adjectives “male” and “female” for two primary reasons. The first is that I rely extensively on the empirical research of others, which generally sorts research participants into the categories of “male” and “female,” and it seems most appropriate to conform my language to that of the researchers on whose work I rely. The second is that the words “men” and “women”—as in “men police officers” and “women police officers”—are not accepted as adjectives, although perhaps this is changing. I recognize that language relating to sex and gender is an evolving space within the academic literature and hope that transparency about the linguistic decisions I am making at this particular point in time is at least helpful, even if it is not entirely persuasive to everyone.

2 Throughout this Essay, I use the term “excessive force” to refer to a use of force that violates the Fourth Amendment. I use the term “unnecessary force” to refer to a use of force that, while not excessive under the Fourth Amendment, is nonetheless greater than is required to accomplish the law enforcement objective in question.

3 See LYNN LANGTON, BUREAU OF JUSTICE STATISTICS, NCJ 230521, WOMEN IN LAW ENFORCEMENT, 1987–2008, at 1–3 (2010).

4 See, e.g., David Alan Sklansky, *Not Your Father's Police Department: Making Sense of the New Demographics of Law Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY 1209, 1219–22 (2006).

5 See, e.g., Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 778–79 (2000).

6 Beyond legal scholarship, a growing body of work has considered the influence of female police officers. See, e.g., Jay Newton-Small, *There Is a Simple Solution to America's Policing Problem: More Female Cops*, TIME (July 14, 2016), <http://time.com/4406327/police-shootings-women-female-cops> [<https://perma.cc/MW3Y-F5RA>] (summarizing studies about the role of women in policing and the incidence of their use of violence as compared to male counterparts).

traction. It further examines and problematizes several common objections to women serving as officers, and ultimately concludes that increasing the number of women on police forces would benefit both society and police departments. Part III suggests several ways that policymakers might increase the number of women serving as police officers.

I. FEMALE OFFICERS

In 1910, Alice Stebbins Wells became the first known female police officer with arrest powers.⁷ Wells petitioned the mayor and city council of Los Angeles to hire a woman police officer. She contended that female police officers were necessary in order to promote greater reporting of certain crimes, explaining that “children and abused and sexually assaulted women needed a female police officer to confide in” and that “most women . . . were extremely uncomfortable in reporting crimes to male officers.”⁸ Wells also convinced the University of California, Los Angeles, to offer the first course on female police officers, and “was named the first president of the Women’s Peace Officers Association of California in 1928.”⁹

Following Wells’s historic appointment, the number of female officers increased slowly at first, then more rapidly.¹⁰ During the 1970s, the percentage of female police officers was about 2%, with most women assigned to desk jobs.¹¹ By 2001, that number had increased to 12.7% in big-city police departments.¹² The most recent data, from 2013, put the percentage of women at 12% of full-time local police officers, with most female officers employed by police departments in

⁷ *Alice Stebbins Wells: Meet the First Woman Police Officer with Arrest Powers in the U.S., WOMEN YOU SHOULD KNOW* (Sept. 12, 2017), <http://womenyoushouldknow.net/alice-stebbins-wells-meet-first-woman-police-officer-arrest-powers-u-s> [https://perma.cc/NK32-JEN5]; see Shannon Woolsey, *Challenges for Women in Policing*, HENDON MEDIA GROUP (Oct. 2010), http://www.hendonpub.com/resources/article_archive/results/details?id=1614 [https://perma.cc/X5X5-T25G].

⁸ “Who’s on First?” *Once and for All, Who Was the First Policewoman in the United States?*, GUARDIANS ANGELS (Feb. 15, 2014), <https://guardiansofangels.wordpress.com/tag/alice-stebbins-wells> [https://perma.cc/8FQD-MXUU].

⁹ *Alice Stebbins Wells: Meet the First Woman Police Officer with Arrest Powers in the U.S.*, *supra* note 7.

¹⁰ See Renee Stepler, *Female Police Officers’ On-the-Job Experiences Diverge from Those of Male Officers*, PEW RES. CTR.: FACT TANK (Jan. 17, 2017), <http://www.pewresearch.org/fact-tank/2017/01/17/female-police-officers-on-the-job-experiences-diverge-from-those-of-male-officers> [https://perma.cc/8PVM-63MR].

¹¹ See *id.*

¹² KIM LONSWAY ET AL., NAT’L CTR. FOR WOMEN & POLICING, MEN, WOMEN, AND POLICE EXCESSIVE FORCE 3 (2002).

larger cities.¹³ But women make up only 10% of supervisors and 3% of department chiefs.¹⁴

Female police officers also experience their jobs differently from men.¹⁵ Women are more likely to say that men are treated with favoritism; interestingly, *men* are more likely to say that *women* are treated with favoritism.¹⁶ Moreover, female officers face a number of challenges specifically because of their gender. These challenges include discrimination against women in hiring and promotion.¹⁷ Other female officers report sexual harassment and, less frequently, sexual assault. In a troubling illustration of many of the issues facing female officers, one officer “has had members of her command staff discuss her personal dating life, remove her from calls and place her on the perimeter because she is a female (and stated that), pass her over for special assignments, and make snide comments about her place being ‘In the kitchen.’”¹⁸ Another was sexually harassed by a colleague who urinated in front of her.¹⁹ Another had a fellow officer pass around topless photos of a woman he said was her (it was not, but it still damaged her reputation).²⁰ Many female officers also note a lack of respect from colleagues: for instance, one says, “No matter what I did I could not prove to my Sergeant I was a good cop.”²¹ Some female police officers report that in many instances their employment is not compatible with having children.

These challenges compound what is already a challenging and exhausting job.²² Importantly, no single cause explains the difficulties female officers experience. Such difficulties are not due solely to the inherent demands of the job. Nor are they solely due to the culture within a predominantly male force or the challenges of maintaining work-life balance. Meaningfully improving working conditions for fe-

¹³ See Stepler, *supra* note 10.

¹⁴ *Id.*

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ See LONSWAY ET AL., *supra* note 12, at 10.

¹⁸ K P, *Challenges as Told by Female Officers*, OFFICER.COM (Sept. 16, 2015), <https://www.officer.com/investigations/article/12115302/challenges-as-told-by-female-officers> [<https://perma.cc/F9PA-LBXQ>].

¹⁹ See *id.*

²⁰ See *id.*

²¹ See *id.*

²² Significantly more police officers report feeling “angry and frustrated” on the job than do members of other professions. See Rich Morin, *Roughly One-in-Five Police Frequently Feel Angry and Frustrated on the Job*, PEW RES. CTR.: FACT TANK (Mar. 9, 2017), <http://www.pewresearch.org/fact-tank/2017/03/09/roughly-one-in-five-police-frequently-feel-angry-and-frustrated-on-the-job> [<https://perma.cc/MNY3-49WF>].

male officers requires a multifaceted effort. Despite these challenges, however, 61% of female officers nevertheless say that their job “always or often makes them feel proud”—a greater percentage than male officers.²³ The pride female officers take in their job—despite the adverse conditions that many encounter—suggests that female officers provide a positive presence on the force and improve the overall quality of policing in their departments. The next Part discusses the way this positive influence manifests itself with respect to the use of force.

II. FEMALE OFFICERS AND THE USE OF FORCE

This Part first summarizes research and other information indicating that women may be less likely to use excessive force than men. It then considers and ultimately rejects several objections to women serving as police officers in greater numbers.

A. *Differences Between Male and Female Police Officers*

Research shows that female police officers use force differently than their male counterparts. These differences have a range of consequences for the civilian populations that the departments police. For example, some consequences are economic: female police officers’ performance saves money for departments when their conduct does not result in costly litigation, settlements, or judgments; this also saves money for taxpayers who ultimately foot the bill for such conduct. Other consequences are cultural: the presence of female police officers may interrupt a “boys’ club” atmosphere in which certain types of sexist behavior are tolerated, or even encouraged, to the detriment of policing.

Across many domains of the policing profession, research indicates that female officers are more restrained in their use of force than their male counterparts. For example, one study found that while 72% of police officers have never fired their service weapon other than at a required training or a shooting range, 30% of male officers report that they have fired their service weapon while on duty, compared with only 11% of female officers.²⁴ Similarly, 46% of men but only about 33% of women expressed agreement with the statement that “some people can only be brought to reason the hard, physical way.”²⁵ And while 58% of male officers in one study thought that “it is more useful

²³ Stepler, *supra* note 10.

²⁴ *Id.*

²⁵ *Id.*

to be aggressive than to be courteous in certain parts of the city,” only 48% of female officers agreed with that statement.²⁶ Thus, while this study revealed that female officers’ views trend in same direction as their male counterparts, there are statistically significant differences.

The gender disparity in the use of force is associated with the frequency of complaints from civilians.²⁷ In a 2002 study of seven large police departments, female police officers made up 12.7% of officers, but accounted for “only 5% of the citizen complaints of excessive force and 2% of the sustained allegations of excessive force.”²⁸ Similarly, female officers account for only 6% of the judgments and settlements paid out from cities to excessive-force complainants.²⁹

Other recent research suggests that hiring more women tends to change the organizational culture of police departments.³⁰ One study found that gender diversity within a particular police department is the greatest predictor of whether that department adopts a community policing model—one associated with building relationships within a community and relying on those relationships to solve problems rather than resorting to intimidation and force.³¹

These studies are complemented by personal narratives of female police officers. Anecdotally, many female officers report using communication to manage situations. One female officer in Pennsylvania suggested that she and other female officers generally “don’t go into a fight looking to keep the fight going. We go into it looking to calm the situation. . . . It’s just something about [female officers], that some kids feel more comfortable talking to a mom-type person rather than a guy in a uniform who looks scary.”³² While her comment certainly invokes certain well-worn stereotypes, it also acknowledges the social reality that how women are perceived affects the way they interact with the public, and that women can leverage that perception to their advantage in addressing and diffusing conflict among civilians—a tactic that legal scholars Devon Carbado and Mitu Gulati have described

²⁶ *Id.*

²⁷ See LONSWAY ET AL., *supra* note 12, at 2.

²⁸ *Id.*

²⁹ *Id.* More detailed research regarding possible discrepancies in the types of assignments given to male and female officers would help to flesh out these data.

³⁰ See Amie M. Schuck, *Female Officers and Community Policing: Examining the Connection Between Gender Diversity and Organizational Change*, 27 WOMEN & CRIM. JUST. 341, 341 (2017).

³¹ See *id.* at 353.

³² Barbara Miller, *Female Police Officers Are Rare but Sought After for Unique Skills*, PENN LIVE (Dec. 8, 2012, 12:07 PM), http://www.pennlive.com/midstate/index.ssf/2012/12/female_police_officers.html [https://perma.cc/2XP9-XKGB].

as “working identity.”³³ That is, while on the job, female police officers may work to make their gender identity salient to those they encounter.

Others echo the comment that women tend to have skills, particularly involving communication, that help defuse tense situations. The unfortunate reality is that women are disproportionately more likely to suffer violence during their lives, often at the hands of men, and so have had to develop skills to ward off potentially violent situations. The longtime police chief of Madison, Wisconsin, who increased the percentage of women on the force to 25% during his tenure, wrote: “Just about every woman has verbal skills that she has developed over her life to handle conflict, tension, even violence, that do not use the volatile mix we men carry with us.”³⁴ Again, while one might regret the fact that women have had to develop skills to handle violence and conflict, that does not change the fact that those skills might enable a female police officer to perform her job with more facility.

And a number of female officers relate their communication skills directly to a decreased need for the use of force. A number of researchers have documented evidence that women, on average, have superior communication skills to men.³⁵ There are also many stories from the field. As one officer explains: “I’ve never been in a fight on my own, because I never had to. I’ve only been in fights instigated by my male counterparts.”³⁶

The result that women are less likely to be held liable for excessive force may be at least partly explained by the research discussed in the previous section documenting the fact that women are less likely to view force as necessary and less likely to fire their service weapons. These tendencies may flow from women’s communications skills

³³ See Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1270–72 (2000); see also Nancy Leong, *Identity Entrepreneurs*, 104 CALIF. L. REV. 1333, 1334 (2016) (explaining how outgroup members—racial minorities and women—sometimes leverage outgroup identity to improve their success in the workplace and beyond).

³⁴ David C. Couper, *Women Police: The Way Forward*, IMPROVING POLICE (May 27, 2015), <https://improvingpolice.wordpress.com/2015/05/27/women-police-the-way-forward> [<https://perma.cc/7MRC-LS9E>].

³⁵ See, e.g., KIM LONSWAY ET AL., NAT’L CTR. FOR WOMEN & POLICING, *HIRING & RETAINING MORE WOMEN: THE ADVANTAGES TO LAW ENFORCEMENT AGENCIES* (2003); see also Curtis Croke, *Women in Law Enforcement*, COMMUNITY POLICING DISPATCH (July 2013), https://cops.usdoj.gov/html/dispatch/07-2013/women_in_law_enforcement.asp [<https://perma.cc/8QJR-9B2Z>]. (“One skill set women often have is that they are more able to communicate with fellow citizens.”).

³⁶ Christopher Moraff, Opinion, *America Needs More Female Cops*, AL JAZEERA (Sept. 10, 2015, 2:00 AM), <http://america.aljazeera.com/opinions/2015/9/america-needs-more-female-cops.html> [<https://perma.cc/W3RQ-EDQ8>].

that—in the aggregate—may differ from men’s. Moreover, such communications skills may prevent the need for any force at all by defusing potentially violent situations.

B. Reluctance and Rebuttal

Given the research available—as well as the well-documented broader benefits of diverse workplaces—one might think that officers, scholars, and policymakers alike would call for recruitment of more women to police forces. Although some have indeed issued such calls, they have been less widespread than one might expect, with relatively little focus on the issue coming from legal scholars.

The reasons for this reluctance are likely multiple and complex. One explanation may be explicit prejudice. Those in charge of recruitment and hiring may not want to interfere with what they see as the benefits of a stereotypically masculine culture on the force. A related reason may be implicit bias, which would cause such decisionmakers to perceive well-qualified women as less capable even though the decisionmakers do not consciously believe that women are inferior officers. But these concerns do not apply with any greater force to the police than to any other workplace. Research supports the idea that gender diversity is a good thing in most collective environments,³⁷ and I am unaware of any evidence that suggests there is an advantage to the “old boys’ club” model in policing or any other workplace. Implicit bias, of course, is its own counterargument.

Another reason may be the stereotype that women are physically unsuited to be police officers. While men are larger and stronger than women on average, for a number of reasons, this is insufficient to justify bias against women. And, as I have discussed in detail in other work, the perceived disparity in athleticism between the sexes may be smaller than expected.³⁸

Some may argue that female officers may be *more* likely to use deadly force because they are afraid of being physically overpowered. This objection is largely unconvincing. First, the data show that women are much less likely to have fired their weapons while on duty than men are.³⁹ Second, *male* police officers frequently argue that they had to shoot someone because they were afraid. Recall the shooting

³⁷ See Fred Gutierl, *Diversity in Science: Why It Is Essential for Excellence*, SCI. AM. (Oct. 1, 2014), <https://www.scientificamerican.com/article/diversity-in-science-why-it-is-essential-for-excellence> [https://perma.cc/M3GB-AJK5].

³⁸ See Nancy Leong, *Against Women’s Sports*, 95 WASH. U. L. REV. 1249 (2018).

³⁹ See Stepler, *supra* note 10.

of Michael Brown in Ferguson in 2014, which, along with the 2012 shooting of Trayvon Martin, launched the collective national concern with police violence against young men of color. Darren Wilson, the police officer who shot Michael Brown, stated: “[W]hen I grabbed him, the only way I can describe it is I felt like a five-year-old holding onto Hulk Hogan.”⁴⁰ He also described Michael Brown as “looking like a demon.”⁴¹ Wilson was six-feet, four-inches tall and weighed 210 pounds at the time of the shooting.⁴² So it does not appear that men—even very large men—are immune from shooting because they got scared, and given that that is the case, it is not clear why we would use that assumption to disqualify women. Put differently, if society does not disqualify large men because they might get scared and shoot, then it also should not disqualify women (of any size) because (one thinks) they might get scared and shoot.

A third reason, also reliant on stereotypes, may posit women as insufficiently authoritative or confrontational, regardless of their physical size and strength, to assert themselves in conflicts with members of the public.⁴³ Yet research and anecdotes indicate that women, in the aggregate, have stronger communication skills than their male counterparts and are more likely to defuse tension from a potentially violent situation. This indicates that women do have the skills to manage conflict.⁴⁴ Indeed, the fact that many women—even very petite women—successfully serve as police officers right now, albeit in smaller numbers than men,⁴⁵ belies the idea that women are inherently insufficiently assertive.

And finally, from that perspective, some feminists may hesitate to advocate for hiring women as a means of improving police forces because they do not wish to essentialize women.⁴⁶ They may worry that claiming that hiring more women provides a solution to problems inherent in police departments will only serve to reinforce assumptions—however benign—that women are more gentle, more civil, and better communicators. Benign sexism, they would say, is still sexism. I understand and am sympathetic to these concerns, but it is one thing to say that all women share certain characteristics and another simply

⁴⁰ Transcript of Grand Jury Hearing, Volume V at 212, *State v. Wilson* (Mo. Cir. Ct. Sept. 16, 2014).

⁴¹ *Id.* at 160–61.

⁴² *Id.* at 198.

⁴³ See Schuck, *supra* note 30, at 346.

⁴⁴ See, e.g., Moraff, *supra* note 36.

⁴⁵ See Crooke, *supra* note 35.

⁴⁶ See Schuck, *supra* note 30, at 342.

to acknowledge that in our imperfect society men and women are socialized differently and that, on average, men and women may behave differently in some circumstances.⁴⁷ Increasing the number of women in the workplace does not mean that any particular woman will have particular qualities, but, in the aggregate, hiring more female officers might bring a more diverse skillset to police departments, which may have many benefits, including reducing the use of excessive force and the use of nonexcessive but nonnegligible and unnecessary force.

In short, many of the obstacles to women becoming police officers are overstated, subject to remedy, or simply inapplicable, and research suggests that hiring women could do a great deal to improve police forces. Departments can do a great deal more than they currently do to improve the gender diversity in their police forces. The next Part outlines several measures that departments can take to increase the number of women on the job, as well as improve the quality of working conditions for those already there.⁴⁸

III. PROPOSALS

One way of increasing diversity in any organization is by improving outreach. Some women may simply never have thought that they could be police officers, perhaps due in part to longstanding portrayals of police officers in Hollywood and other media.⁴⁹ To counteract this misperception, police officers can develop outreach programs with local schools—perhaps even as early as elementary school—to encourage young people of all genders to consider policing as a career.

Other mechanisms can also lead to better female representation in police departments. First, departments should ensure that the fitness test actually assesses relevant skills.⁵⁰ It is rare that a police officer has to do as many pushups as possible in two minutes while on the job; the obstacle courses that some departments are beginning to adopt provide a much better metric by including tasks that officers are

47 My title's play on Carole Gilligan's "In a Different Voice," then, is not intended to lend my approval to her essentialist view of women. Rather, it is intended to suggest that adding individuals with different life experiences—including living life as a member of a particular gender—may change their approach to particular situations. CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982).

48 See generally LONSWAY ET AL., *supra* note 12.

49 See, e.g., *THE ENFORCER* (Warner Bros. 1976).

50 See, e.g., Eve A. Levin, Note, *Gender-Normed Physical-Ability Tests Under Title VII*, 118 COLUM. L. REV. 567, 588–89 (2018); Jakob Rodgers, *Colorado Springs Police Fitness Test Discriminated Against Women, Judge Rules in Lawsuit*, DENVER POST (July 13, 2017, 7:50 AM), <https://www.denverpost.com/2017/07/12/colorado-springs-police-fitness-test-discrimination-women-lawsuit> [<https://perma.cc/T5EQ-QNP7>].

actually likely to have to perform while on the job. Moreover, departments should ensure that they adequately value important skills at which women excel—for example, verbal skills and the ability to defuse tense situations.

Police departments can also prevent attrition of female officers—both as candidates and once hired—by managing the culture of police departments. Even in situations where there is no legally actionable sexual harassment, the “boys’ club” culture or machismo of some police departments may deter women from pursuing careers in policing or from persisting once hired. Maintaining a professional, gender-neutral culture will help with both recruitment and retention.

Likewise, police departments need to take seriously women’s complaints of gender-based unfair treatment, sexual harassment, and abuse. Specifically, both formal and informal complaint procedures need to be available, women should be assured that their concerns will be taken seriously, and, in particular, police departments need to protect women from retaliation for “breaking ranks” by complaining about unacceptable behavior by a fellow officer.

Related to the foregoing measures, police departments should consistently promote outstanding female officers and assign them leadership roles. This practice will both incentivize good performance and assist with changing the culture within departments. Moreover, showcasing talented female officers to the general public will help to improve community relations and may inspire other women to consider policing as a career.⁵¹ Publicizing instances of female officers engaging in outstanding policing will normalize female police officers and encourage other women to follow in their footsteps.⁵²

CONCLUSION

Police brutality remains a persistent and troubling social phenomenon. Remedying the problem requires action on many fronts, including diversifying police forces. While many forms of diversity are

⁵¹ See generally Katharine T. Bartlett, Commentary, *Showcasing: The Positive Spin*, 89 N.C. L. REV. 1055 (2011) (explaining the positive case for showcasing diversity in corporate boards).

⁵² For instance, relatively little was said about Crystal Griner, the Capitol Police officer who was shot in the ankle while helping to save the life of Congressman Steve Scalise in 2017. Some noted the irony of a lesbian officer helping to save the life of an anti-gay marriage Congressman. See Rebecca Oh, *Lesbian Police Officer Hailed a Hero After Virginia Shooting*, NBC NEWS (June 16, 2017, 4:28 PM), <https://www.nbcnews.com/feature/nbc-out/lesbian-police-officer-hailed-hero-after-virginia-shooting-n773321> [<https://perma.cc/3JNS-DC4T>].

important, available research suggests that improving gender diversity would help change the internal culture of police departments as well as the way that those departments interact with the public.