

## Expanded Course Outline

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### Course Objective

This course will provide students with an understanding of what racial profiling is and the negative impact it can have, not only on the individual targeted, but also on the entire community. The practice of racial profiling or bias-based policing can compromise public trust. Students will learn that stereotyping of any group of people can lead to racial profiling or bias-based policing practices. Finally, students will be exposed to real-life examples designed to enhance their ability to critically analyze their own beliefs and distinguish between when race is a legitimate factor in identifying a suspect and when it is not.

### I. Why Are We Here?

- A. Introduction
  - 1. Instructor
  - 2. Student
- B. Explain background of legislation and course
  - 1. Law enforcement shall not engage in racial profiling
  - 2. Law enforcement will participate in racial profiling training
- C. Ten seconds to write first words they think of about racial profiling
  - 1. Read the student responses out loud
  - 2. Tell students that even with all the experience represented in the room there is still confusion about racial profiling
  - 3. Tell students we will discuss racial profiling both conceptually and legally
- D. Guidelines for discussion
  - 1. Use "I" statements
  - 2. Active listening
  - 3. Be honest and open
  - 4. Take risks
  - 5. Be respectful of others and their views
  - 6. Confidentiality

### II. Racial Profiling Defined

- A. Small group discussion
  - 1. Acknowledge that there is a lot of confusion about what racial profiling is or is not

2. Ask the class: "How has the issue of racial profiling had an effect on you?"
  - a. Capture information on flip charts
  - b. Possible student responses
    - i. I won't be able to stop minorities.
    - ii. I will have to write the same number of tickets to all races.
    - iii. I won't be able to make consensual searches anymore.
    - iv. If I arrest or stop too many minorities, I will get sued.
- B. Clarifying the controversies about the issues
  1. You can still do your job effectively
    - a. Profiling behavior is more effective than profiling race
  2. Racial profiling and racism are not the same
    - a. Racism is hate-motivated
    - b. Racial profiling occurs when race is used as a predictor of criminality
  3. Members of all racial groups commit crimes
    - a. Actions of some should not cast aspersions on all
  4. You cannot assume all members of a particular group commit a specific crime even if members of that group are associated with that crime
    - a. Terrorism is not just committed by Middle Easterners
    - b. Two white males committed the Oklahoma City bombing
  5. The majority of all groups are law abiding
    - a. The crime rate is a measure of police activity versus criminal activity
    - b. Statistics indicate no higher contraband "hit rate" in minority vehicles stops or searches
  6. Racial profiling does occur
    - a. December 1999 Gallup Poll indicates that nationally, 60% of adults perceive that racial profiling is widespread
    - b. That percentage is higher in minority communities
    - c. Perception is reality as far as the affect it has on the public
  7. Data Collection Issues
    - a. Many law enforcement agencies in California and nationwide have elected to collect data on traffic stops

- b. There are mixed interpretations of the data
    - i. Early data indicates there may be a higher contact with minorities
    - ii. There appears to be a difference in the type of action taken with minorities after the stop
      - a) More searches
      - b) Longer detentions
  - c. Currently, there is no uniform method for collecting data
    - i. Agency-specific
    - ii. Several volunteer
    - iii. Several under consent decree (involuntary)
    - iv. Final outcome can be court mandates
8. No one group has a monopoly on racial profiling
- a. It is frequently precipitated as an institutional practice
  - b. It can be learned or a trained practice

### **III. Legal Considerations**

#### **A. California specific laws**

- 1. Senate Bill 1102
  - a. Modified Penal Code Section 13519.4 PC
  - b. Law enforcement shall not engage in racial profiling
  - c. Racial profiling is the practice of detaining individuals based on a broad view of a particular group of people

#### **B. Federal laws**

- 1. 4th Amendment
  - a. Reasonable suspicion or probable cause
    - i. Must be individualized
    - ii. Focused on the person to be stopped or detained
- 2. 14th Amendment
  - a. Equal application of the law
  - b. Law enforcement must be colorblind in conduct of its responsibilities
  - c. Individualized suspicion cannot be based on race unless race was provided as a specific descriptor

3. Case law
  - a. Whren v United States
    - i. Creates powerful discretion on the part of the officers to make pretext stops
      - a) An officer stops a driver for a minor traffic violation to investigate a hunch that the driver is engaged in a more serious activity
      - b) It's what motivates the pretext stop that must be considered
- C. Legal/ethical exercise of this discretion is the key
  1. A stop can be legal under the 4th Amendment and still illegal under the 14th Amendment
- D. Differences between criminal profiling and racial profiling
  1. Criminal profiling is a legitimate practice based on psychological characteristics that can be analyzed and evaluated
  2. Criminal profiling is based on articulable behaviors or characteristics
  3. Racial profiling is the use of race alone as a predictor
- E. Lawfully applying your discretion
  1. Law enforcement officers may only consider factors such as race, ethnicity, religion, national origin, sexual orientation, gender, or lifestyle when they are a reported descriptor which links a specific person or persons to a particular unlawful incident.
- F. Scenario 1. An officer is parked at a stop sign in proximity to an upper-class neighborhood high school. Two white teens, in a Ford Mustang, roll through the stop sign. The officer does not stop the vehicle. Two Latino teens, in a late model sedan, also rolls the stop sign. The officer makes a stop on that vehicle.
  1. Was the stop legal?
    - a. Yes - 22450 (a) V.C.
  2. Did the stop constitute racial profiling?
    - a. We don't know until we know what was in the mind of the officer
  3. What would make this stop racial profiling?
    - a. If the decision to stop was based on race
    - b. Unequal application of the law
  4. Anytime race tips the scale for the decision to take enforcement action, it is racial profiling

- G. Scenario 2. Two Vietnamese teens are walking in front of a liquor store in a high-crime, low-economical area. There are community members in the background walking or talking. Officers watch the two boys walk back and forth, looking in, pointing, etc. The officers then pull up to the curb and get out of the unit. The passenger officer contacts the boys, saying, "Hey, guys, how ya doing?"
1. Could the kids have just been "hanging around?"
    - a. Yes
  2. Did this appear to be a contact or a detention?
    - a. May have merited a detention
    - b. Appeared to be a contact
  3. Consensual contacts
    - a. Do not need to be based on specific observable behavior
    - b. Subjects believe they can leave at any time
    - c. It may be argued in court whether the contact is consensual or was actually a detention
  4. You can still use your intuition within the law
  5. Always examine your motives and biases
    - a. If all consensual contacts are people of a particular race, the contacts could be a pattern and practice of racial profiling
  6. Consider explaining the reason for the contact
- H. Scenario 3. A black middle-aged male in sweats is riding a bicycle and carrying a package under his arm. This is in an upper middle-class, predominately white neighborhood. An officer driving by makes a U-turn, pulls up alongside the bicyclist and says, "Hey, pull over to the curb." The officer gets out and contacts the man, asking him where he is coming from and going to.
1. Could this happen?
    - a. Yes
  2. What appeared to be the reasonable suspicion for the stop?
  3. All persons of any race have a right to go anywhere
  4. Race out of place is racial profiling
    - a. Violates 4th and 14th Amendments
- I. Scenario 4 Class Exercise. Over the past six to eight months, there has been a steady increase in drug-related activity and crime in the vicinity of 5th and Kyle. This location is in a lower income Latino community. Many community members and organizations have approached the local police/sheriff's department to request their assistance in stopping the criminal activity to make the streets safer for the children. They are also

concerned that drug activity is having a negative impact on the businesses in the area. In addition to this, the Chief/Sheriff regularly receives phone calls from political and business leaders demanding that the department "take action" to remedy this problem.

A report distributed to the patrol division indicates that there have been 20 arrests for possession of cocaine in and around the area of 5th and Kyle within the past three months. The ethnicity of the buyers was mixed; however, interviews with those arrested indicate that all but three of them purchased their narcotics from male Hispanics between 20-40 years of age.

Your supervisor has asked you to prepare an enforcement strategy for responding to the community's concerns and requests to "clean up" this area.

Take 5 minutes with your group members and design an action plan. The plan should include, but not be limited to, short-range goals, long-range goals, resources-internal/external, and follow-up.

1. What activities do you plan to respond to this request for service?
  - a. Increased patrol
  - b. Surveillance
  - c. Increased traffic stops
  - d. Increased field interview cards (stop 'n' chats)
  - e. Undercover operations
2. What actions could lead to racial profiling?
  - a. Pretext stops and detentions
  - b. Increased field interviews
  - c. Searches
3. How could different members of the community perceive the increased enforcement?
  - a. Possibly racial profiling
4. Communication with the community is important
5. Targeted enforcement must still be in the "green zone"
6. Statistics alone are not reasonable suspicion or probable cause
  - a. Officers cannot assume that all members of a particular race/ethnic group commit crimes

## **IV. History of Civil Rights**

### **A. Evolution of race relations in America**

#### **1. Nationally**

- a. During WWII, this country participated in widespread racial profiling when thousands of Japanese Americans were incarcerated based solely on their race
  - i. This occurred while hundreds of Japanese fought for this country in all branches of the military
- b. Throughout the country, for the most part, minorities and whites lived in separate communities
- c. Minorities had fewer opportunities educationally and economically
- d. In the 50's, the civil rights movement was the largest mass movement to address American ideals of justice and equality
- e. Law enforcement was put in the position of enforcing State laws, which supported segregation
- f. Civil rights was not a movement for minority rights but for the rights of every citizen in the United States
  - i. "Injustice anywhere is a threat to justice everywhere."

*— Dr. Martin Luther King, Jr.*

- g. As a society, we dismantled the major practice of discrimination
  - i. The laws pertain to all people equally
  - ii. Segregation was legally abolished

#### **2. California**

- a. Racially restrictive covenants were in existence up to forty years ago
  - i. Race alone was probable cause to be stopped in certain neighborhoods
- b. School segregation of Mexican, Asian, and Native Americans existed until 1947 (*Mendez v Westminster* - Orange County)
- c. Los Angeles Riots - August 1965
  - i. In the 60's every major riot was a result of some police action
  - ii. Began in response to police action and perceived prejudice
- d. Los Angeles Riots - 1992
  - i. Result of police action with Rodney King

**B. Group discussion**

1. What impact does the history we've just learned about have on our profession today?
  - a. Law enforcement has had to enforce unjust laws in the past
  - b. Law enforcement and the community must build and maintain mutual trust
2. What impact does history have on our own agency?
  - a. Discuss historical events from your jurisdiction
3. Are we creating any new history for ethnic groups today?
  - a. Yes - Middle Eastern communities
4. In light of recent events, what is our responsibility to Middle Eastern communities?
  - a. Protect them from terrorist threats
  - b. Ensure their safety
  - c. Still need to use individualized behaviors or specific descriptors for reasonable cause to stop or detain
5. What can we do as individuals to increase the trust between the community and law enforcement?
  - a. Treat them fairly
  - b. Explain why we make contacts
  - c. Learn about their cultures
  - d. Learn basics of their languages
  - e. Do not racial profile
  - f. Interact with the community on a non-enforcement basis
  - g. COPS, CPOPS, etc.

**C. Lessons learned**

1. The civil rights movement had a profound effect on the nation and on law enforcement
2. One of the biggest legacies from the civil rights movement was to elevate the role of law enforcement to protect and enforce civil rights for all people
  - a. This means there is a higher expectation for the ethical standards from law enforcement
3. Civil rights movement also led to the desegregation of law enforcement
4. Law enforcement transitioned from enforcement approach to community oriented policing (COPS/CPSPS)

- D. Racially-biased policing is a human rights issue
  - 1. Protecting civil rights is not an inconvenience for modern police; it is the foundation of policing
  - 2. Racially-biased policing is not just a law enforcement problem
    - a. It can only be solved through police-citizen partnerships
    - b. There must be mutual trust and respect
  - 3. Professional law enforcement personnel wants to respond effectively to the concerns regarding racially biased policing
  - 4. Combating racial profiling requires ongoing discussions

### **V. Impact of Racial Profiling**

- A. Racial profiling has a negative impact on everyone
  - 1. There is a direct impact on the individual citizen profiled
  - 2. There is a collective impact on the entire community
  - 3. There is a residual impact on the individual officer
    - a. Affects credibility
    - b. Can compromise officer safety
    - c. Can impede criminal investigations due to lack of community support and assistance
  - 4. On the entire criminal justice system
    - a. Jurors who have been profiled may have a negative perception of law enforcement
    - b. Officer credibility issues can result in refusals to file by the prosecution
- B. Racial profiling does impact everyone
  - 1. Eliminating this practice, by understanding the laws and working more closely with your communities in a community oriented policing atmosphere, will benefit you as well as the people your agency serves

### **VI. Community Considerations**

- A. Recognizing and respecting the key elements or indices that make up evolving culture among the residents of a community
  - 1. Shared beliefs
  - 2. Values, ways of thinking (including about law enforcement)
  - 3. Behaviors, customs, or traditions

4. Factors to consider:
  - a. Eye contact
  - b. Phrases
  - c. Cultural and religious practices
  - d. Dress
  - e. Hair styles (dreadlocks, shaved heads)
  - f. Vehicle
  - g. Tattoos
  - h. History
  - i. Language
5. Law enforcement is a subculture
  - a. Most officers share beliefs
  - b. Values, ways of thinking, including perceptions about different cultures
  - c. Behaviors, customs, or traditions
  - d. History and language
6. We must give the respect to other cultures that we in law enforcement want ourselves
  - a. Every community has its own culture
  - b. Within that community, everyone is still an individual
7. Community Oriented Policing is an excellent avenue for law enforcement to eradicate racial profiling
  - a. Communities want to be involved
  - b. Communities want to respect law enforcement
  - c. Communities want to be respected

## **VII. Ethical Considerations**

- A. Law enforcement responsibilities
  1. Racial profiling runs counter to the type of policing California agencies want to do
  2. Penal Code Section 13519.4 - Duty to Report
    - a. The obligations of officers to prevent, report, and respond to discriminatory or biased practices by fellow officers
  3. The change in the perception of the community about racial profiling will not happen with policy but as a result of the actions of individual officers

## **VIII. Wrap Up**

- A. Review
- B. Questions and answers
- C. Evaluations