IACP LAW ENFORCEMENT POLICY CENTER

Unbiased Policing

Concepts and Issues Paper
Originally Published: June 2006
Revised: December 2015

I. INTRODUCTION

A. Purpose of the Document

This paper is designed to accompany the Model Policy on Unbiased Policing established by the IACP Law Enforcement Policy Center. It provides essential background material and supporting documentation on the developmental philosophy and implementation requirements of the model policy. This material will be of value to law enforcement executives in their efforts to tailor the model to the requirements and circumstances of their communities and their law enforcement agencies.

B. Background

One of the basic tenets of law enforcement in a democracy is that justice be based on fair and equitable treatment. As the Law Enforcement Code of Ethics states:

[As a law enforcement officer] I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor; malice or ill will, never employing unnecessary force or violence and never accepting gratuities.¹

If law enforcement agencies expect to gain and foster public trust and cooperation, they must ensure that every effort is made to enforce the law impartially and deliver services to the public in an equitable manner. This is not only a basic requirement of law enforcement but also the right of all persons in our society to be treated equitably under the law.²

Law Enforcement Discretion. Law enforcement officers are often confronted with the issue of bias with regard to traffic stops and allegations of what has commonly been referred to as racial profiling. This is one prominent aspect of what can be regarded as biased policing, but it is not the only aspect of this practice. In response to charges of racial profiling, many law enforcement agencies have established policies specifically banning the practice. But the majority of these policies are narrowly drawn, addressing only traffic enforcement issues, and overlook or avoid the many other ways bias, prejudice, or discrimination can emerge in law enforcement work. Any contact with the public can raise the issue of law enforcement bias—whether a victim or complainant summons law enforcement, officers take independent enforcement action, or officers make discretionary decisions concerning crime prevention or service delivery.

Chief Justice Warren Burger once described the significant discretion afforded law enforcement officers:

¹ Excerpt from the Law Enforcement Code of Ethics.
² The concepts of justice and fairness have been variously defined and debated by legal scholars and philosophers. It is not the intent of, nor does it serve the underlying purpose of, this document to debate the meaning of these constructs. Rather, this document and the underlying model policy on which it is based accept the conventional notion of fairness, that is, unbiased and objective administration of the law and the delivery of law enforcement services. This includes not only adherence to procedural due process as defined in law but also the impartial interaction of law enforcement with the public in all its forms.
It is often overlooked that no public officials in the entire range of government are given such wide discretion on matters dealing with the daily lives of citizens as are police officers.

In the broad terms of public administration, I think it would be a safe assumption that the scope of discretion enlarges as we look upward in the hierarchy of government. In other words, the higher the rank, the greater is the discretion. But this is not true of police work.

The policeman on the beat, or in the patrol car, makes more decisions and exercises broader discretion affecting the daily lives of people, every day and to a greater extent, in many respects than a judge will ordinarily exercise in a week.

No law book, no lawyer, no judge can really tell the policeman on the beat how to exercise this discretion perfectly in every one of the thousands of different situations that can arise in the hour-to-hour work of the policeman. Yet we must recognize that we need not choose between no guidelines at all and perfect guidelines. There must be some guidance by way of basic concepts that will assist the officer in these circumstances.

Basically . . . it is a matter of common sense and sound judgment, and yet we know that one man’s common sense may be another man’s mistake. Hence the need for carefully devising basic standards to guide the exercise of this discretion and, second, for careful and comprehensive training of officers before they are thrust into situations that would baffle the wisest judge.3

Discretion is an undeniable part of law enforcement work. The outcome of discretionary decision making across the spectrum of policing unquestionably leads to differences in when to enforce, how to enforce, and what to enforce. Law enforcement officers must have the discretion to apply the law based on individual circumstances and conditions that they, by training and experience, perceive to be in the best interests of the individual and the community. However, discretion cannot be unchecked. Where discretionary decisions of officers are found to be at odds with statutory law, department policy, rules, or training, there must be provisions for review of such decisions, and the application of disciplinary sanctions where warranted.

For example, an officer engages in biased policing when he or she does not provide preventive patrol equitably in a beat based on personal preference for or antipathy towards certain economic or social classes or other groups of people based on related demographics. Biased policing is also evident, for example, when an officer purposely fails to enforce domestic violence laws because of preconceptions and attitudes about the victim and perpetrator’s culture or race; when an officer fails to adequately provide assistance to a female prostitute who has been raped because of her profession or social class; or when an officer does not ticket a speeding motorist because the driver is a well-known and highly respected person in the community. Such abuses of discretion cannot be left unchecked by law enforcement agencies.

Nearly all policy guidance, however, acknowledges that there are exceptions to strict adherence to the letter of the law and departmental procedures. This discussion, then, is not about the prudence, propriety, or necessity of law enforcement discretion generally. Rather, it is directed to the use of law enforcement discretion based on false or unreasonable perceptions, preconceptions, or biases of officers that cloud objectivity and interfere with professional decision making and training.

Often, officials view biased policing solely as enforcement activities based on race, ethnic background, national origin, gender, gender identity, sexual orientation, religion, age, disability, or cultural group. But, biased policing goes beyond the requirement to engage in law enforcement activities irrespective of race and other individual differences protected by law. It also includes equal treatment irrespective of one’s economic, social, or political status.

Equal treatment in the context of the model policy means that all persons, irrespective of race or other individual distinctions, should be treated the same way under the same or reasonably similar circumstances. It does not mean, however, that all persons in the same or similar circumstances must be, or even should be, treated identically in all cases. Reasonable concessions and accommodations may be, and sometimes should be, made when dealing with uncommon circumstances.

For example, a man is taken into custody for a nuisance offense and failure to comply with law enforcement orders. His caregiver tells law enforcement that the man is autistic and, as such, did not fully comprehend the gravity of his actions or the need to heed law enforcement commands. The officer decides that a reasonable alternative to arrest is to release the individual to the caregiver’s custody without taking further enforcement action. This decision may constitute unequal application of the law, but it is a reasonable and fair decision. Reasonable concessions and accommodations such as this may be, and sometimes are, the best action when dealing with persons who have such individual differences as mental or physical disabilities, injury, illness, or related conditions, or when a violation of the law is otherwise mitigated by similar extenuating conditions.

3 Chief Justice Warren E. Burger, addressing the FBI National Academy, June 1981.
circumstances. Such discretionary actions, while providing individualized or even preferential treatment, do not constitute biased policing or professional misconduct. In fact, they are a reflection of professionalism and good training.

Biased policing can also be evidenced in decisions, customs, or practices related to whether and how police services are provided. Sometimes referred to as community caretaking functions, such law enforcement actions and activities do not normally include enforcement of the law, but contribute to the overall well-being and safety of the public. These functions include, but are not limited to, assistance to disabled motorists; certain crime prevention activities such as home security inspections; providing public information and education; and providing aid to injured persons or others in distress. An officer who purposefully fails to deliver, is intentionally ineffectual or disrespectful in delivering, or who effectively rations these and other types of discretionary services to the public based on prejudice, favoritism, or related motives, is engaged in another form of biased policing.

Favoritism or cronyism toward individuals based on familial relationships, deferential treatment of friends, associates, or mutual acquaintances, and preferential treatment of persons in high places or persons of influence may occur within an agency. These actions are among the types of biased policing that may be overlooked or hidden from scrutiny, but are examples of unjust, biased policing nonetheless.

II. PROCEDURES

A. Traffic Enforcement

Motor vehicle stops are the most common circumstances in which citizens and law enforcement come into face-to-face contact. Thus, it is more understandable that this environment has been the source of the largest number of complaints of biased policing in recent times. As such, it is appropriate to pay particular attention to biased policing in this enforcement context.

Considering the inconvenience and stress that vehicle stops typically create among motorists, it also follows that this environment is ripe for the development of negative reactions by motorists to include charges of law enforcement bias. Motorists often ask themselves or others: Why me? Why single me out for speeding rather than one of the other motorists? Why was I stopped as opposed to them?

Officer decision making with respect to such matters as who is issued a warning as opposed to a citation, who is asked for permission to consent search and who is not, and who is arrested and who is not are the types of decisions that deserve scrutiny by individual officers, their supervisors, and their agencies. Traffic stops were the source of particular attention with regard to biased policing in the past—not only because they are the main source of law enforcement-public interaction—but also because they involve wide law enforcement discretion.

Officers must be particularly attuned to possible negative cultural and racial preconceptions and recognize that law enforcement has the opportunity, through professional conduct, to help reverse such stereotypes. This holds true during traffic stops, as well as in the broad range of situations in which officers interact with the public.

B. Promoting Fair and Impartial Treatment

Biased law enforcement comes with a price tag, as it unfairly allocates law enforcement intervention, protection, or police services. To this end, the model policy on unbiased policing states that officers shall “take equivalent enforcement actions and provide quality services to all persons in the same or similar circumstances.” It limits the use of individual demographics such as race, ethnic background, national origin, gender, gender identity, sexual orientation, religion, socioeconomic status, age, disability, cultural group, or political status when performing law enforcement duties or delivering police services to those situations where “such characteristics are part of a specific subject description.”

Additionally, officers who witness or who are aware of instances of biased policing are required, under the policy, to report the incidents to their supervisors. In addition, situations where such action is appropriate, officers are encouraged to intervene at the time the biased policing incident occurs.

There are other measures that departments can take to help prevent biased policing. One of those is the prohibition against participation in enforcement actions by officers who are personally involved in the matter in question. Such situations are most common among officers who are off duty. For example, an officer is visiting a friend who becomes engaged in an argument with a neighbor. The argument escalates into a physical confrontation and the officer’s friend asks him to arrest the neighbor for assault. Unless exigent circumstances prevail, an officer in this and similar situations should summon an on-duty officer rather than take individual enforcement action. Unbiased law enforcement work requires dispassionate, objective analysis of the facts, and that unbiased viewpoint can be compromised in such situations.

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4 According to the Bureau of Justice Statistics, 44 percent of face-to-face citizen contacts with the police are in the context of traffic stops. See Contacts between Police and the Public 2008 by Christine Eith and Matthew R. Durose (U.S. Department of Justice, October 2011, http://www.bjs.gov/content/pub/pdf/cpp08.pdf).

5 See the IACP Model Policy on Off-Duty Arrests.
Departments can take a number of other steps to help ensure unbiased policing. They can start by identifying recruits who harbor cultural insensitivities, biases, and prejudices that would render them unfit for law enforcement service. There is no uniformly accepted testing instrument that can be used as a single determinant of a person’s bias, although the MMPI is often used to raise flags on potential problems in this area. Moreover, studies have determined that totally unbiased persons do not exist. All people carry some level of bias—often referred to as implicit or unconscious bias—whether they know it or not. The ability to classify, draw parallels, and categorize people, places, and things, is a common characteristic of all human beings. So the issue is to first weed out recruits and employees who act upon biases and to ensure that all officers can police in an unbiased manner.

Interviews present one opportunity to question recruits on this subject but may not provide the best forum for eliciting candid responses. Perhaps more valuable are comprehensive background investigations that explore this subject with persons who are in a reasonably objective position to assess a candidate’s views and perspectives.

Recruit, in-service, and remedial training should be made available to officers on a range of subjects related to unbiased policing. These courses should include instruction on cultural awareness, law enforcement ethics, police-public interaction, standards of conduct, ethics, implicit bias, and communication techniques. And, on a larger leadership level, law enforcement agencies should ensure that their supervisors and commanders promote unbiased policing practices to their subordinates and hold them accountable for supervision, monitoring, and enforcing agency policy by taking corrective actions when necessary.

Here, as in other issues surrounding officer misconduct, it is better to focus on preventing wrongdoing than to focus on investigating and punishing misconduct. Agencies should also establish and monitor early warning systems that help identify potentially problematic officers.

The agency should also take seriously all complaints of biased policing and should accept these and other complaints by all means available whether the complainant does or does not choose to remain anonymous. All such complaints should be forwarded to the agency’s internal affairs or professional standards authority. The internal affairs or related authority should maintain data relating specifically to complaints of biased policing and the outcome of those investigations. Information should be provided to the chief executive officer of the agency or other designated authority in a manner most suitable for administrative review, problem identification, and development of corrective actions.

C. Professional Law Enforcement-Community Encounters

Officer adherence to sound agency policy and procedures is essential in countering biased policing. However, it should not stop there. Attention should be paid to actions that officers should take to enhance communication and foster understanding between law enforcement agencies and the diverse communities they serve. Again for example, in the context of traffic stops, providing a brief explanation about why a stop was made can help to dissuade a person from thinking that he or she is being singled out and treated unfairly. An officer may explain to a stopped motorist that the law enforcement agency has stepped up enforcement for speeding in the neighborhood because residents have complained of the danger of speeding cars to their children who play there. This explanation lets the individual involved know that the officer is performing a legitimate law enforcement activity based on the express wishes of the community rather than on some personal motives or attitudes.

Establishing law enforcement legitimacy is essential to build community trust and confidence in law enforcement and foster cooperation in crime fighting and related activities. Legitimacy encompasses the notion that a law enforcement agency has earned the public’s confidence, trust, and respect and that, in so doing, has been given their unspoken endorsement to fulfill their mission honestly and fairly. Gaining legitimacy is an important factor in reducing impressions of law enforcement bias within the community and replacing it with the feeling that law enforcement is dealing with the public in an unbiased and neutral manner. There are several approaches that law enforcement leadership should stress in order to help establish legitimacy and promote trust in interactions with the public. These approaches are contained in the concepts associated with procedural justice. Specifically, they refer to providing the public with (1) voice: the perception that their side of the story has been heard; (2) respect: the perception that law enforcement treats them with dignity and respect; (3) neutrality: the perception that an officer’s decision-making is unbiased and trustworthy; (4) understanding: providing persons with some basic information on why and how officials made their decision in a given matter; and (5) helpfulness: showing that an officer is interested in the individual’s personal situation to the extent reasonable and allowable.

For example, an important component of following procedural justice is to allow members of the public to express themselves and relate their concerns, thereby giving them a voice in policing their community. This can

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7 See, for example, the IACP Model Policy on Early Warning Systems.
be pursued on a macro level through public forums and community meetings where community concerns can be aired and agency policy and procedures can be discussed and explained. Seeking the assistance of communities by involving them in problem identification and problem solving through initiatives such as community watch programs and the promotion of neighborhood livability.

On an individual officer level, it is important for officers to take the time to listen to the persons with whom they interact. Again, in the context of traffic enforcement, it may be something as simple as allowing an individual to express why he or she was driving over the speed limit or why he or she failed to stop at a stop sign. Giving people the opportunity to explain their actions or mitigating circumstances provides them with a greater sense of fairness in law enforcement interactions, even if they are ultimately given a citation or warning.

Another approach to achieving law enforcement legitimacy within the community is to demonstrate neutrality in enforcement activities. When members of the community understand that officers are interacting with them according to agency policy, and not on the basis of personal attitudes or biases, it goes a long way in demonstrating to the public that officers are performing their duties from a neutral perspective.

And finally, from a law enforcement agency perspective, it is essential that the agency requires its officers to treat all persons with dignity and respect. Dismissive, indifferent, or condescending attitudes toward the public in general may be among the most damaging of actions that law enforcement officers can take when the agency is attempting to establish agency legitimacy within a community. People are keenly aware of an officer’s attitude, however conveyed, which has a lasting effect on their views of law enforcement and their future willingness to provide support and cooperation.

Acknowledgment

This document was developed by the IACP Law Enforcement Policy Center in conjunction with Lorie Fridell. Ms. Fridell is an Associate Professor of Criminology at the University of South Florida and a national expert on biased policing. With funding from the COPS Office, she has developed the Fair and Impartial Policing training program, which is based on the modern science of bias.