

NATIONAL LATINO PEACE OFFICERS' ASSOCIATION

POSITION PAPER

NON-BIASED BASED POLICING

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Introduction

DWB...or, Driving While Black / Driving While Brown, is a term that strikes fear and anger into the hearts of many Americans. The thought of being a police target simply because of one's skin color or ethnicity runs against the grain of the main principles upon which this great nation was founded. The concept of "all men are created equal" is still not realized in the minds of many Americans. Collected data on vehicle stops by some law enforcement agencies appears to confirm some of these perceptions that officers target persons to stop, first by their appearance, then by observing probable cause. But vehicle stops are only one police activity where consideration of race enters into the enforcement decision-making process. The issue of whether or not race/ethnicity enters into the equation in determining what, if any, enforcement action should be taken is one of the largest and most difficult issues facing law enforcement today.

The National Latino Peace Officers' Association (NLPOA) has taken great pride in representing the rights and interests of law enforcement professionals of Latino descent. The issue of racial profiling, however, focuses our attention on the application of the law differently upon specific groups of people by law enforcement professionals, including Latino officers.

Additionally, as members of a minority group, NLPOA members should have a better understanding of the victimization that the practice of racial profiling has upon a people and a community.

While the NLPOA has historically attempted to protect law enforcement officers of Latino ethnicity against unlawful discrimination, usually surrounding issues of hiring, promotion, and assignment, this issue causes us to look at how our chosen profession may be improved by the equal application of the law.

Non-biased based policing is the new term for racial profiling. It is more encompassing in that it includes other types of unlawful treatment of persons of identified groups and not only racial/ethnic groups. This paper will examine the various facets of this issue as it applies to law enforcement and their organizations. We will make recommendations on departmental policies, on internal strategies and on external practices that we think will help a law enforcement agencies improve in their quality of service to the entire public.

As the term implies, non-biased based policing can be defined as employing law enforcement strategies that exclude consideration of a person's race, ethnicity, creed, color, national origin, sexual orientation, disability, gender, or religion.

Conversely, bias based policing is the unlawful practice of including any of the above personal characteristics in making a decision of what type of law enforcement action, if any, to take. Except when used as a description of a person suspected of a specific crime, any consideration of the above characteristics would be deemed unlawful.

Racial Profiling vs. Biased Based Policing

We recommend that the term "racial profiling" no longer be used to describe this phenomenon. We believe that this term tends to be too restrictive in describing traditional police behaviors that result in the perception that law enforcement professionals use race in their decision-making to the detriment of racial minorities.

For example, racial profiling is thought to occur when a law enforcement officer takes an action based solely on the basis of race. It is the term "solely" that causes the difficulty for us. While there may be a few officers who are so racially prejudiced that consideration of race is the only factor in making a determination of an action, most officers probably use race as one in a group of factors in making the determination.

A description of this is could be the “race out of place” stop. An officer sees a member of a racial minority group in a neighborhood that is predominately white. The officer considers not only the subject’s race, but also the make-up of the neighborhood in determining that a stop should be made.

Further complicating this term is the word “profiling”. While profiling is nothing new to police work, in this context profiling has taken an extremely negative slant for an otherwise legitimate practice. Criminal profiling is a bona fide activity that helps in focusing attention on persons likely to engage in specific crimes based on behaviors, not race. The use of the term racial profiling, we think, confuses the legitimate police practice of criminal profiling from the unlawful practice of enforcing laws upon members of minority groups.

The narrowest of definitions of “racial profiling” limits it to vehicle stops and does not consider other police actions where the unlawful consideration of race enters the mind of the officer. The NLPOA believes that with the current perception by a growing number of members of the minority community and by a significant number of the majority community that officer do engage in some sort of racial consideration in their application of the law, that the expanded term, biased based policing, is more appropriate. Biased based policing is more encompassing in that it includes all police activities where biases, racial and others, may enter into the law enforcement decision-making process.

Policy Recommendation

As stated above, racially biased policing occurs when law enforcement inappropriately or unlawfully considers race/ethnicity in deciding if or what enforcement action should occur. Similarly, biases concerning disabilities, religion, sexual orientation, gender, national origin, creed or color would also be inappropriate or unlawful in the decision-making process. The below recommended policy was adopted, in large part, from the Police Executive Research Forum’s publication Racial Biased Policing: A Principled Response (2001). We made some modifications

that we feel better fit what we believe to be better adoptable by more law enforcement agencies, but the policy, for the most part, says the same thing.

The policy we recommend emphasizes that detentions, traffic stops, arrests, searches and seizures of property by officers will be based on legitimate probable cause or reasonable suspicion. It restricts officers' ability to use race, religion, ethnicity, ...etc. in establishing that reasonable suspicion or probable cause. The policy further requires that the use of race, ethnicity, religion, ...etc. be in compliance with the equal protection clause of the 14th Amendment.

Non-Biased Based Policing Policy and Procedure Policy

Members of this organization are prohibited from inappropriately or unlawfully considering race, ethnicity, religion, national origin, sexual orientation, gender, or lifestyle in deciding whether or not or to what extent enforcement intervention will occur.

Procedure

- A. All investigative detentions, traffic stops, arrests, searches, and seizures of property by employees will be based on a standard of reasonable suspicion or probable cause as required by the 4th Amendment of the U.S. Constitution and relevant statutory authority. Employees must be able to articulate specific facts and circumstances that support probable cause or reasonable suspicion for an arrest, traffic stop, investigation, detention or search.*

- B. Except as provided in this procedure, employees shall not consider race, ethnicity, religion, national origin, sexual orientation, gender, or lifestyle in establishing either reasonable suspicion or probable cause. Appropriate consideration of race, ethnicity, religion, national origin, sexual orientation, or lifestyle shall be used for purposes of housing, classification, transportation, or other matters affecting an inmate's status when necessary for the safety and security of the inmate or the institution. Consideration of the above-mentioned personal characteristics shall not be used for purposes of inmate discipline.*

C. Employees may take into account a reported descriptor such as race, ethnicity, religion, national origin, sexual orientation, gender, or lifestyle of a specific suspect or suspects based on credible, reliable, and locally relevant information that links a person(s) of a specific group to a particular criminal incident. Race, ethnicity, religion, national origin, sexual orientation, gender, or lifestyle can never be the sole factor in establishing reasonable suspicion or probable cause, but can, in the restricted circumstances described above, be one factor of the totality of the circumstances.