Policing Impartially

~ CHAPTER 6 ~

Topics and concepts included in this chapter:

1. Effects of bias and prejudice on the evolution of the police profession.
2. Racial profiling as it relates to the law and Department policy.
3. Guidelines to be followed when communicating with the public.
4. Response of the police in instances where bias is suspected.

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BIAS AND POLICE HISTORY

You are ambassadors representing the NYPD, and as such, you must always consider good community relations a core aspect of your mission. A police officer must have an unbiased attitude towards the many diverse communities within the City as well as respecting the many cultures in those communities. New York City is composed of a vast array of people of diverse ethnic, racial, cultural and class backgrounds. As a police officer, you will be in a unique position to learn the ways of life of these different populations. Not only can this be personally enriching, it is also essential to your work.

Police officers work in diverse communities among people who may not share their race, ethnicity, cultural background, or way of looking at the world. As a result, officers sometimes find their beliefs challenged by people who may or may not be breaking the law. In this context, hidden biases are likely to surface and sometimes threaten the officer's ability to professionally use discretion and communicate with the public. In a jurisdiction as diverse as New York City, such biases and the conduct they may produce can be disastrous. This chapter explores what you, as a police officer, need to know in order to deal with a diverse population in a manner consistent with law and Department guidelines.

As police officers, you are required to enforce the law impartially without regard to actual or perceived race, class, ethnicity, culture, religion, age, gender, sexual orientation, disability, immigration or housing status. At the same time, we are members of a larger society in which bias and discrimination against certain groups of people are matters of historical and statistical fact. The changing patterns of prejudice that are part of U.S. history are reflected in major organizations and institutions, including urban and rural police departments across the country. As noted in a speech by former Police Commissioner William Bratton, American policing has been part of the best of American history but unfortunately some of the worst parts as well. Understanding this history and how it has shaped perceptions will help you become a better, more effective police officer.

In 1805, African American "free men of color" were first hired as police officers in the City of New Orleans. Ironically, their major duties were to catch runaway slaves and to enforce the Slave Code. For generations thereafter, the conflicted and second-class status of African-Americans in policing took many forms that, today, appear equally bizarre and insulting. As recently as the 1940s, the City of Miami maintained a separate black police force comprised of African-American officers who patrolled Miami's black neighborhoods. The late Maurice Turner, the African-American former Chief of Police in Washington DC, often recounted what he found when he entered that department in the 1960s – he was not permitted to share patrol cars with white officers, and was not permitted to arrest white people.

Women were hired as police matrons in the 1920s and assigned to work in areas traditionally viewed as *feminine*, such as counseling juveniles and children,

investigating missing persons and sex offenses, and performing clerical work. Because patrol was a prerequisite for promotions, *police matrons* remained at the bottom of the hierarchy, regardless of their skill and accomplishments. This began to change in the 1960s, when two New York City *Policewomen*, Felicia Spritzer and Gertrude Schimmel, sued the Department and won the right to compete with *patrolmen* on promotional exams. Prior to their victory, *policewomen* were barred from supervisory and command positions in the NYPD.

Another major change came in the 1970s with the passage of the Equal Employment Opportunity Act and a United States Supreme Court decision called *Griggs v. Duke Power Company*. In *Griggs*, the Supreme Court ruled that publicly supported employers who used standards to hire or promote people that had a disparate impact had to be able to show, when sued, that the standards they used were *job relevant*, and served to separate people who could perform the job from those who could not. In other words, a police department could not insist on hiring only men for patrol officers' jobs unless it could show that men did the job better than women could. In addition, as the NYPD did at the time, a police department could insist on hiring only people who were at least 5'8" only if it could show that people more than 5'8" tall could be effective police officers, while those less than 5'8" tall could not. No police department could show any of these things, of course.

The NYPD became one of only a few large urban departments that integrated women without the force of a lawsuit. It also changed its physical, strength, and agility standards to avoid discriminating against other groups. It was at this time – in 1973 – that women were first hired by the NYPD on the same basis as men, and that the former *patrolman* and *policewoman* job titles were eliminated in favor of today's *police officer*.

Gay police officers have been members of the service from the start, but their status was a hidden secret punishable by expulsion in many departments. These policies were based on irrational beliefs that gay men are unfit for combat and are likely to sexually harass their heterosexual partners. In 1981, New York City Police Sergeant Charles Cochrane destroyed these myths about gay men in policing when he publicly announced he was gay and declared that he was not alone.

The important issues of race and racial bias, in the context of police practices and the relationship between the police and major segments of minority communities in New York City and nationally, are now at the forefront of an intense local and national debate. The NYPD's stop-and-frisk policies and practices have been the subject of several lawsuits and public debate since 1999, including the case of *Floyd v. City of New York* and some related cases, which are now settled. An extensive remedial process is now underway. The Department is collaborating with the court-appointed monitor and others to ensure those remedies are implemented. The excessive use of stops of members of the public, which reached almost 700,000 stops in 2011, together with recent widely-publicized police officer-involved shootings and other non-firearms

use of force incidents in New York and around the country, have significantly deepened the mistrust of police by many members of various minority communities in New York and nationally. Recognizing, addressing, and overcoming this mistrust will improve police-community relations and lead to a safer city. Our job is to keep every neighborhood and community in the city safe and free from crime and disorder, but to do that in partnership with our communities in ways that regain their trust.

The NYPD has made important strides in overcoming discrimination and it is important that we continue on this path. A generation ago, this was an agency composed almost entirely of tall men. Most were white, and all, publicly at least, professed to be heterosexual. If you look at the diversity of your class, you will see that much has changed since then. This Department is now far more diverse than it has ever been. The Department's efforts to overcome bias within its ranks have been accompanied by our attempts to treat the public in an evenhanded and bias-free manner and a commitment to constitutional and accountable law enforcement policies and practices.

Perception and Implicit Bias

The historical examples provided above highlight the role that overt prejudice, stereotyping, and discrimination have played in law enforcement. However, people are not always conscious of their biases. Without our awareness, cultural beliefs and stereotypes filter our perception and influence what we see. The result is that two rational people may interpret the same reality in very different ways. Likewise, one person may view identical behavior differently, depending on the racial, ethnic or cultural identity of the actor. The term ***implicit bias*** refers to the automatic stereotypes and attitudes that we associate with social groups. These biases, which encompass both favorable and unfavorable assessments, can be activated unintentionally and without ill will. Implicit racial biases are a result of repeated exposures to the cultural stereotypes about different racial groups. Implicit biases are different from biases individuals know they have and choose to conceal. People are generally unaware that they hold implicit biases - which can contradict a person's conscious values and beliefs. Implicit biases are the bi-product of our experiences in life and in particular--police work. Implicit bias exists in most adult humans; they are the instinctual 'shortcuts' that help us draw conclusions about what we see. They act as a safety mechanism for survival and, in fact, as police officers you will be trained to make quick assessments at scenes based on your experiences and knowledge of a particular area or group of persons. However, be aware that as your skills of observation develop and your heightened awareness increases, implicit bias can creep in and can actually be detrimental to your decision making. If you are not aware of it, implicit bias can impair your decision-making in regards to what you see and the conclusions you come to. Put simply, while your decisions about a person or scene might be based on several past experiences, if your mind is completely closed to alternative possibilities, you can ultimately be incorrect. Implicit Bias is a paradox of policing that you must be aware of to be effective. When ordinary citizens are influenced by bias, they may behave in ways that

are undesirable; when officers on the street are influenced by bias, whether consciously or unconsciously, it can be both dangerous to life and damaging to our relations and our ability to do the job.

Here is an example: you and your partner are patrolling the streets in a precinct in Brooklyn at 2 a.m. You come across a black male, armed with a gun, holding a white man against the wall. Would you see this as a robbery in progress or as a plainclothes police officer in the process of arresting a dangerous suspect? Would your perception of what was happening be different if the man with the gun was white and the man against the wall was black?

Similar perceptual conflicts may affect contacts between the police and the public, resulting in words or actions that strengthen the stereotypes on the part of both the police and the public.

Here is another example: Imagine you and your partner receive a call that a black male, carrying a shotgun in a shopping bag, is heading towards an apartment building on 23rd Street. You arrive at the location and observe a man with a shopping bag, walking up the stairs to the building on 23rd Street. You approach the man and ask for consent to search his bag. He shows you that it only contains a quart of milk, a frozen pizza, a cold six-pack, and a pound of coffee. The man gives you a dirty look and whispers "racist" and "harassment" under his breath. Annoyed and bewildered, you utter your favorite expletive to your partner, slam the car door shut, and return the man's glare as your partner drives off.

Replay the tape. Ask yourself if there is a safe way to handle the situation, at one point or another, that might break the cycle of miscommunication, resulting in a more satisfactory conclusion for both parties. Can you understand why the man might react in this way? Can you think of things you might do in this circumstance to leave him feeling better about his contact with you? What could you do to make it easier for the next cop who encounters this individual?

Policing and Prejudice

There are many reasons why you, as a police officer, must not engage in discriminatory behavior. For one thing, it is against the 14th Amendment of the U.S. Constitution and Article 1, Section 11 of the New York State Constitution, both of which state that no person shall be denied equal protection of the law, and the New York State Administrative Code**. As a police officer, you simply may not base your treatment of people on their actual or perceived gender, race, ethnicity, religion, age, sexual orientation, disability, immigration or housing status, or membership in any class.**

RACIAL PROFILING

Within this context, it is important for you to understand the difference between *racial profiling* and *criminal profiling*. **Racial profiling refers to those times when a police officer's decision to stop and question, frisk, search, arrest, summons, conduct a Level 1 or 2 *DeBour* encounter, and/or take any other law enforcement action against a person is motivated, even in part, by the actual or perceived race, color, ethnicity, or national origin of that person,** and the officer's decision is not based on a specific and reliable suspect description**.**

Individuals may not be targeted for any enforcement action, including stops and frisks, because they are members of a racial or ethnic group that appears more frequently in local crime suspect data. Race, color, ethnicity, or national origin may only be considered where the stop is based on a specific and reliable suspect description that includes not just race, color, ethnicity, or national origin, as well as age and gender, but also other identifying characteristics or information. When an officer carries out a stop based on reasonable suspicion that a person fits such a description, the officer may consider the race, color, ethnicity, or national origin of the suspect, just as a police officer may consider height or hair color. When a stop is *not* based on such a specific suspect description, however, race, color, ethnicity, or national origin may not be used *at all* as a motivation or justification for the stop.

Additionally, New York City Administrative Code section 14-151 prohibits the Department and its officers from intentionally engaging in biased-based profiling. This means that a member of the service may not make a determination to initiate law enforcement action against an individual based "on actual or perceived race, national origin, color, creed, age, alienage or citizenship status, gender, sexual orientation, disability, or housing status. . . rather than an individual's behavior or other information or circumstances that links a person or persons to suspected unlawful activity."

By contrast, ***criminal profiling*** is a method by which officers, through careful observation of activities and environment, identify a suspicious person who, for perfectly legal and legitimate reasons, may be stopped. You cannot stop and question or otherwise intervene in the lives of members of a group because you believe, or because local crime suspect data indicates that members of that group are disproportionately involved in criminal or other wrongful behavior. You can stop people only when you have very particular suspicions about the individuals you are stopping. For example:

- You would be race profiling if you stopped and questioned a young black man because he was walking in a neighborhood in which young black men reportedly committed most crime. But you would not be race profiling if, in the same neighborhood, you stopped and questioned a young black man who closely matched a reasonably detailed description (e.g., "male, black, early 20s, dark complexion, thin build, black pants, dark leather coat") of a person who had just committed a crime in the neighborhood.

- You would be race profiling if you stopped and questioned a young white man in a car because someone had told you "the only white people who came into the neighborhood were there to buy drugs." However, in the same neighborhood, you would not be race profiling if you stopped and questioned a young white man who slowly drove through the neighborhood, and made brief stops at locations that had a history of drug dealing.

Prejudiced behavior is problematic not only because it violates the law and Departmental guidelines, but also because it damages public trust and undermines the relationship between the police and the community. Citizens feel unprotected when they believe that those who they entrust with the responsibility for their safety are capable of using racist language and acting in discriminatory ways. The communication of biases by police officers also reinforces the perception in many communities that police officers often discriminate against members of certain racial, gender, religious and other demographic groups. This, in turn, creates a dangerous atmosphere for the police, who cannot work safely or effectively without community support.

UNDERSTANDING BIAS

Understanding some of the myths that surround the concept of race may help correct some misconceptions that underlie bias. **Race is a social rather than a biological construct**. **There is no scientific evidence to support the idea that differences in personality, temperament, character, or intelligence are based on race**. In other words, the differences that we see in color generally are only skin-deep and do not translate into widespread biological differences that are unique to groups.

The large groups that we characterize as races are too heterogeneous to lump together in a scientific way. The percentage of your genes that are reflected in external appearance, the basis by which we talk about race, seems to be in the range of .01 percent. For this reason, most genetic scientists do not view race as a biological concept.

The human brain, however, is highly attuned to differences in appearance, leading people to exaggerate the significance of what has come to be called race. The false beliefs that come to be linked with race then take on a life of their own and are resistant to change. The reasons for this are complex. In any case, prejudice is attached to strong emotions that are often buried in past experience. The result is that we tend to accept new information *only* if it reinforces previous attitudes. Conflicting evidence is then dismissed as insignificant or untrue, or otherwise rationalized according to previous notions. For example, if a person holds negative attitudes about some group, they are likely to interpret any unpleasant behavior by a member of that group as "the way they all are." However, if the same prejudiced person should

encounter a member of the same group whose behavior is contrary to the prejudice, they are likely to write it off as an exception – "Yeah, maybe that guy treated me okay, but most of them are terrible."

The Development of Prejudice

Understanding where biased beliefs and attitudes come from may help you recognize and overcome the ones that you have come to take for granted. Most of us adopt the beliefs and values of our parents and siblings, which probably reflect those of the cultural, ethnic, class and racial group of which they are a part. In addition, traumatic events occurring in childhood may also influence how you understand and react to situations arising in the world around you. If, as a kid, you had a bad experience with a member of a group your parents or neighbors stereotyped, it is likely to have convinced you that the stereotype was correct.

Experience with peers in school may have further refined your beliefs and attitudes, reinforcing or challenging biases that were learned earlier in life. Prejudice is often based on unfamiliarity. If you have never had contact with a member of a group different from your own, you are likely to have expectations about them that are based on what other people say, or how that group is portrayed in the movies and the news. Many people have never been to New York City because of what they have seen on television – a city full of crime, violence, hustlers, and self-centered egomaniacs. As you consider this, think also about the accuracy of what you think you know about another city you have never actually visited. If you have never been to Los Angeles, your expectations of it may be based on what you have seen in movies and on television.

Nevertheless, people who have had the opportunity to develop friendships with groups from diverse social backgrounds may be more open than others to alternative ways of understanding humanity. Their experience overcomes the anxiety and confusion that are linked to the unknown, and teaches the falsehood of racial and ethnic stereotypes.

Occupational experiences also inform attitudes. When you began your career as a police officer, you entered a subculture with a unique set of values, rules, and language that define who is and who is not a member of the police family. In time, you will be able to recognize most police officers by the way they talk, act and, to some degree, think about the world around them. Police officers do not usually gain popularity by questioning the views of peers or challenging shared attitudes. The result is that biases are sometimes reinforced in a group context and passed on to new officers who are eager to gain the acceptance of their veteran colleagues.

Some of the attitudes that may set police apart from others are partly determined by the highly selective exposure police have to the community they serve. Police officers tend to interact with specific categories of people, including: crime victims, helpless persons, emotionally disturbed people, criminal offenders, and naïve or

unwilling citizens who do not particularly want to do what you ask. Much of the time, these people are upset, angry or otherwise in a negative state of mind. As cops have observed, many of the people police come in contact with are emotionally upset; are in trouble; have committed crimes; have been victimized or witnessed crimes; they have had accidents; they are involved in arguments; they have lost their keys – or (even worse) their kids. As much as officers try to help these folks when it is appropriate to do so, dealing with them is not easy. When these individuals look different from officers – when they are from a different race or ethnic group, when they speak a different language or have a different sexual orientation – it becomes very easy to stereotype the entire group based on our experience with a few.

Further, because they are symbols of authority, police sometimes are blamed for events over which they have little control. This can be demoralizing and can alienate the police from the public. Because police are often dealing with criminal offenders, officers can tend to forget that most members of the community are good, law-abiding, people who appreciate their presence and the positive influence police have on children and young people. Police officers then might view the occasional instances of praise as aberrations.

Because of these distortions, police officers must work hard to maintain a balanced perspective about the people they serve and about humanity in general. Remember that a courteous, professional, and respectful police officer who illustrates the opposite of bias and discrimination helps create a partnership with the community and builds rapport with the people in it. The result is that the citizens become our allies and, in turn, policing becomes safer and easier. This enhances our effectiveness and increases our pride and pleasure in what we do.

COMMUNICATION GUIDELINES

- **Explain yourself**. Informing people why you stopped them will help dispel the perception that their particular stops are racially motivated and prevent altercations and misunderstandings from arising. Often, officers stop individuals because they match suspect descriptions or because they are acting in ways that do, in fact, look suspicious, only to learn that there is a perfectly legitimate explanation for what they were doing. The people stopped do not know why you stopped them and, unless you tell them why you did, they are likely to believe that your actions were arbitrary. It takes only a few seconds to do this, and it can turn an angry person into someone who appreciates your effort -- *"I'm sorry, Sir. We were looking for a person who had just committed a mugging, and you matched the description. Let me ask the radio dispatcher to repeat the description, and you can listen to it. Then you'll know why we stopped you."*

- **Do not assume that only criminals fear the police.** When police-community tensions are high, in part because of high profile incidents of police misconduct,

some people may fear the police out of mistrust, not because they have something to hide or are criminal. You will also encounter people from countries in which oppressed populations learned the hard way that they could not trust the police in their city. Some New Yorkers came here from places in which police or military authorities have engaged in genocidal massacres and torture of the civilian population. These individuals will not always be able to distinguish you from the authorities who killed their families and friends. As a result, they may avoid contact with you in just the same way that they would have in their native countries.

- **Be wary of ethnocentrism.** *Ethnocentrism* is the false assumption that one person's cultural beliefs and practices are inherently superior to another's. Unless you are dealing with people who practice a particular cultural activity that violates the law – like polygamy, cockfighting, drug use, or animal sacrifice – this is the wrong view to take. Unless people are violating the law, we are not in the business of making judgments about their beliefs and customs.

- **Understand the effect of proper tactics on innocent people.** The public may perceive proper police tactics as alienating and scary. Remember that many of the people you stop will be released without further action because it turns out that there is a legitimate explanation for their activity and/or because there is no evidence that they were doing anything wrong. Keep in mind that what is routine for you – stopping and questioning pedestrians or motorists – is far from routine for most of the people you are stopping. Keep in mind also that, when you stop and question people, you are letting them know that (in your judgment at least) they look wrong. This is a very negative assessment, so you need to expect that the people you stop may resent it. Be aware of that, and do what you can to ease their resentment.

- **Be sensitive to individual's language preferences.** Do not take it personally if an individual of another gender, race, ethnicity, or from another country wants to speak with your partner who shares their characteristics. Even individuals who speak English may prefer to speak their native language because it makes them more comfortable or they are afraid that police will be critical of their grammar and pronunciation.

- **Be wary of being intolerant.** Intolerance may exist among police officers that are members of minority groups as well as those who are not. Indeed, sometimes minority police officers may feel more intolerant towards certain behavior on the part of members of the racial, ethnic, religious, or gender group with which they identify. Such feelings may result from a concern that other officers will assume the behaviors are representative of the group as a whole. No matter who you are or where you come from, your job as a police officer is to deal with people as individuals, not as members of groups, whether those groups are your own or another.

- **Do not engage in racial profiling.** It is against the law. It violates fundamental democratic precepts and freedoms. It violates this Department's policies. It is offensive. It violates your responsibility to treat people equally. It diverts us from catching real criminals. It alienates us from people who need us, and hurts our ability to do our job. It makes things more difficult for every police officer who will subsequently encounter its victims. It breeds disrespect and distrust of every level of government. It embarrasses and humiliates people. It can get you disciplined, fired, sued, and prosecuted. You can probably think of other reasons not to do it, but the point is that you **will not** do it.

- **Avoid assumptions based on a person's minority affiliation.** Do not overlook a witness because you do not believe that a member of their particular group could possibly have valuable information. Do not let your feelings about a particular class of people affect your recognition of a victim.

- **Be aware of miscommunications resulting from language.** Language differences can lead to serious problems for non-English speakers. In one case, a man was arrested for agreeing that he molested his daughter. It turned out that the man had only confessed that his drinking bothered his daughter. In Spanish, the verb "molestar" means, "to bother." This is very different from the English meaning of "molesting;" what father has not *bothered* his daughter?

- **Be aware of cultural notions of space.** Notions of personal space and behavior are cultural and indicate respect. Nigerians, for example, have a proper social distance – the range at which people talk to each other – and it may be less than 15 inches. Many people may think that anyone who stands this close to you while they talk is trying to get "*in your face."* This is not the case, however. In many parts of the world, standing close up is a sign of respect. Similarly, many Americans look people in the eye when they talk to them. However, some cultures in the United States, as well as other countries, show respect by averting their eyes when talking to authority figures like police. Be conscious of both of these cultural habits, and take them for what they are: signs of respect and attention, rather than disrespect and inattention.

- **Do not imitate the speech patterns of others.** Police officers should not imitate speech patterns of other racial, ethnic and class groups when communicating cross culturally. They appear disingenuous, artificial, and possibly racist.

- **Do not use terms or words that devalue groups of people or stereotype them.** You should never use the derogatory terms used by ignorant people to devalue members of groups. You know what they are – they are gender, racial, and ethnic slurs and insults about people's sexual orientation. They have no place in your vocabulary. When you use them on-duty, you demean people and

yourself. When you use them off-duty, you build habits that are not easy to turn off at work.

- **Do not tell or tolerate ethnic, racial or sexist jokes**, even if you think they are not offensive. In this area, what one person sees as harmless politically incorrect fun may be deeply insulting to others.

- **Avoid expressing stereotypical assumptions that spotlight minorities or other groups,** or that set them apart from others. Examples: "For a woman cop, she did a good job" (implying that this is the exception rather than the rule, or that female cops should be judged by different standards than males). "He's Latino, but he works hard." "She's black, but she really knows her stuff." "He's gay, but he'll leave you alone." "He's Colombian but not involved with drugs." "She's Italian, but I don't think her family has any mob connections." "He's Irish, but I've never seen him drunk." No matter who you are, you can think of some negative reference to one or more of the groups of which you are a part. You can also think of how disrespected you feel when you have heard them. Keep that in mind, and do not make any such references about anybody else.

- **Do not take unfounded accusations of racial or ethnic bias personally.**

- **Be courteous.** People are offended when the police are rude and discourteous. They will become angry when they believe that law enforcement officials treated them "like criminals." Do not feed into this by turning their worst fears about the police into reality.

- **Be self-aware.** Understanding ourselves and what makes us tick will help us to shape the way we interact with others.
    - Self-awareness about one's early life experiences that helped to shape perceptions, filters, and assumptions about people.
    - Self-awareness about how one feels toward someone who is "different."
    - Management of assumptions and discomfort in dealing with people who are different (e.g., do we try to deny that differences exist and laugh differences away, or imitate "them" in order to appear comfortable?).
    - Ability to be authentic in communication with others while modifying communication style, when necessary.

- **Follow these directions when dealing with people who use English as a second language.**
    - Speak slowly and enunciate clearly.

- Face the person and speak directly even when using a translator.
- Avoid concentrated eye contact if the other speaker is not making direct eye contact.
- Do not use jargon, slang, idioms, or reduced forms (e.g. “gonna,” “gotta,” “wanna,” “couldja”).
- Avoid complex verb tenses (e.g., “If I would have known, I might have been able to provide assistance.”).
- Repeat key issues and questions in different ways.
- Avoid asking questions that can be answered by “yes” or “no.” Ask questions that will allow the answer to show understanding.
- Use short, simple sentences; pause between sentences.
- Use visual cues such as gestures, demonstrations, and brief written phrases.
- Use active rather than passive verbs (e.g., “I expect your attention.” [active] rather than “Your attention is expected.” [passive])
- Have materials duplicated in bilingual format.
- Pause frequently and give breaks. Monitor your speed when you speak.
- Use only one idea per sentence.
- Respect the silence and pauses that non-native English speakers need to formulate their sentences and to translate them in their minds.
- Check comprehension by having the other speaker repeat material or instructions, and summarize frequently.
- Encourage and provide positive feedback on the person’s ability to communicate.
- Listen even more attentively than you do when communicating with a native speaker of English.
- Be patient.
- Do not speak louder. It will not help.

Note: These are *general* guidelines for communicating with persons for whom English is a second language. There may exceptions to the above guidelines when communicating with certain cultures.

RACIAL PROFILING AND THE LAW

What is Racial Profiling?

Racial profiling may be defined as the stopping, frisking, searching, arresting, summonsing, or taking of other law enforcement action against individuals when that law enforcement action is motivated even in part by a person's actual or perceived racial, ethnic or national origin status, unless the law enforcement action was taken pursuant to a specific and reliable suspect description that includes not just race, ethnicity or national origin, age and gender, but also other identifying characteristics or information.

Why Racial Profiling is Illegal

The 14th Amendment to the United States Constitution, as well as Article 1, Section 11 of the New York State Constitution, contain equal protection clauses which state that no person shall be denied equal protection of the law. This means that all persons must be treated fairly and equally by administrators of the law, including the police, in all jurisdictions of the country and New York State. Additionally, New York State has afforded increased protection to its citizens under its Civil Rights Law, Section 40-C, which states, *"No person shall be subjected to any discrimination in his civil rights, or to any harassment because of race, creed, color, national origin, sex, marital status or disability, by any other persons."* Finally, New York City Administrative Code Section 14-151 also prohibits biased-based policing with respect to additional demographic categories, including creed, age, alienage or citizenship status, gender, sexual orientation, disability or housing status.

Many of the actions taken by police officers are governed by statutory regulations and requirements. When we stop a person on the street, stop a motor vehicle, or arrest an individual, there are specific standards of proof that must be met for our actions to be considered lawful. These standards are a composite of both federal and state constitutions, as well as state procedural law. Harsh consequences follow when police officers disregard these guidelines. If it is determined that a police officer has not followed the prescribed guidelines, the following situations may result:

- The law enforcement action (summons, arrest, etc.) taken by the police officer is dismissed.

- The police officer may be subject to Departmental discipline or termination.

- The police officer and/or the Department may be subject to civil and/or criminal penalties (monetary fines and/or imprisonment).

NYPD Policy Prohibiting Racial Profiling

The New York City Police Department is committed to both the impartial enforcement of law and the protection of Constitutional rights. To reinforce these commitments and to ensure all members of the service engage only in constitutionally sound policing practices, the Department prohibits the use of racial profiling in law enforcement actions. *Racial profiling* is defined as a decision to initiate police action that is motivated even in part by a person's race, color, ethnicity or national origin, unless the decision to initiate police action was based on a specific and reliable suspect description that includes not just race, ethnicity or national origin, age and gender, but also other identifying characteristics or information. The use of other characteristics such as religion, age, gender, gender identity, sexual orientation, alienage or citizenship status, disability, and housing status as the determining factor for taking police action is also prohibited.

All police initiated enforcement actions, including, but not limited to, arrests, stop and questions, and motor vehicle stops, will be based on the standards required by the Fourth and Fourteenth Amendments of the U.S. Constitution, Article I, Section 12 of the New York State Constitution, Administrative Code Section 14-151, and other applicable laws. The law confers on police officers the authority to stop, question, and if warranted, frisk an individual whom a member reasonably suspects has committed, is committing, or is about to commit a felony or Penal Law misdemeanor. Members must be able to articulate the factors which led them to take enforcement action, in particular to those factors leading to reasonable suspicion for a stop and question and any subsequent frisk, or probable cause for an arrest. Individuals may not be targeted for any enforcement action, including stops and frisks, because they are members of a racial or ethnic group that appears more frequently in local crime suspect data. Race, color, ethnicity, or national origin may only be considered where the stop is based on a specific and reliable suspect description that includes not just race, color, ethnicity, or national origin, as well as age and gender, but also other identifying characteristics or information.

Conducting stops in an unbiased manner fosters and strengthens relationships between police officers and members of the community, and inspires confidence in, and support for, policing efforts.

While performing their duties, members are reminded that it is not racial profiling to take into account the reported race, color, ethnicity, national origin, religion, age, gender, gender identity, or sexual orientation of a specific subject in the same way the member would use pedigree information, e.g., height, weight, age, etc., about specific subjects.