

**DISCRIMINATORY PROFILING AND PROFESSIONAL TRAFFIC STOPS**  
**Instructor Preparation**

**TRAINING TIME:** 4 hours

**GOAL:** The participant will understand the meaning of discriminatory profiling with relation to traffic stops and demonstrate a protocol for using good interpersonal skills when making traffic stops.

**What the Participants Will be Able to Do**

**OBJECTIVES:** After this session, the participants will be able to:

1. Identify important benefits of traffic enforcement.
2. Define discriminatory profiling as the unequal treatment of any person including stopping, questioning, searching, detention, or arrest solely or primarily on the basis of their racial or ethnic characteristics, religion, gender, sexual orientation or socio-economic status.
3. Discuss the real and perceived problems faced by minorities affected by discriminatory profiling.
4. Relate constitutional and case laws that impact how and when traffic stops are conducted.
5. Identify officer behavior that can help to minimize tension and maximize the cooperation of citizens during a traffic stop.
6. Demonstrate, in role-playing situations, the characteristics of a professional traffic stop.

## Pre-Reading

The purpose of this session to relate to the students the importance of making professional traffic stops and to identify interpersonal skills that will help to increase officer-motorist relations. A question asked in this lesson is whether discriminatory profiling is real or perceived. Through the activity “The Perils of Driving While Black,” particularly the ACLU’s guidelines for encounters with police, the students should gain an understanding of the problem from a minority perspective. Other examples are given to show that various ethnic and racial groups experience discriminatory profiling. Traffic enforcement is beneficial to the entire community when properly done. When officers conduct improper traffic stops as with discriminatory profiling, the community as a whole is not served. This should be the emphasis of this lesson.

At the end of the lesson you will demonstrate to the students a “best way” to conduct a traffic stop. You will provide to the students a handout listing the steps for this best practice. The students will demonstrate through role-play the same verbal approach for minimizing conflict and maximizing officer-motorist relations. You should emphasize to the students that they must be consistent and treat every motorist like they wish to be treated.

### Pre-reading and Handouts:

Appendix A: Discriminatory Profiling Instructor Pre-reading

Handout 1: The Best Verbal Approach to Minimize Conflict

Handout 2: The Gallup Poll on Racial Profiling

## DISCRIMINATORY PROFILING AND PROFESSIONAL TRAFFIC STOPS

### Session Presentation Guide

**INTRODUCTION:** Traffic stops are an effective way for law enforcement officers to serve and protect. Effective stops will impact violent crime, illegal drugs, and traffic crashes. Traffic crashes are the leading killer of young people ages 15 to 24. In the United States a murder occurs every 31 minutes, but a fatal car crash every 13 minutes.

**Benefits:** Traffic enforcement has a number of important spin-off benefits:

- Visible traffic enforcement has a symbolic effect. When drivers see a marked police unit working traffic, they tend to slow down and pay more attention to their own driving.
- Police visibility provides the driving public with a sense of security and a feeling that the police are on the job.
- Sociologists confirm that criminals shy away from areas where they fear they may be stopped and discovered by an active traffic patrol.

**Our streets and highways are one place where both the good citizens and the criminal element must go - neither can avoid the other. Therefore, we see:**

- Car thefts and car-jackings
- Wanted persons and escaped prisoners
- Drivers whose licenses have been suspended because of their unsafe driving habits, and who continue to drive, circumvent laws designed to keep dangerous drivers off the road
- Abused, kidnapped, and runaway children
- Illegal weapons
- Transportation of alcohol by minors
- Drunken drivers, and drivers impaired by the use of illegal drugs
- Criminals fleeing crime scenes, or on their way to a crime scene
- Uninsured motorists
- Traffic stops frequently lead to arrests for more serious crimes. Serial killer Ted Bundy was apprehended in a traffic stop. Timothy McVeigh, the Oklahoma City bomber, was apprehended by State Trooper Charlie Hanger because McVeigh was speeding and had an expired license plate.

**DISCUSS:** Define discriminatory profiling.

**ASK:** With the understanding that traffic stops are beneficial to the community, how do we define discriminatory profiling?

**PRESENT:**

**Definition of Discriminatory Profiling** - Unequal treatment of any person including stopping, questioning, searching, detention, or arrest solely or primarily on the basis of their racial or ethnic characteristics, religion, gender, sexual orientation or socio-economic status.

## Why is Bias-Based Profiling Wrong?

Title 18, Section 242 of the United States Code provides that “whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person...to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws...or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race...shall be fined under this title or imprisoned for not more than one year, or both, and if bodily injury results...shall be fined under this title or imprisoned for not more than 10 years or both...and if death results...shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.”

In a growing number of cities and states, laws and consent decrees have been enacted that require officers to report racial data on all traffic stops, in an attempt to determine if discriminatory profiling is occurring. We, as a law enforcement community, should solve this problem ourselves so that legislative intervention is not necessary.

### PRESENT:

#### **Minority residents frequently feel that they have been singled out by the police for unequal treatment.**

- A study by the Attorney General of New Jersey indicated that 84% of whites polled rated the New Jersey State Police as “excellent or good.” When blacks were asked the same question, 63% of blacks rated the State Police as “poor” or “less than average.”
- Public opinion polls reported in the *Sourcebook of Criminal Justice Statistics* showed that while 59.9% of whites in the U.S. overall say they have “a great deal” or “quite a lot” of confidence in their local police, this number drops to 44.1% for blacks and 53.3% for Hispanics.
- Whereas about 11% of whites and Hispanics say they have “very little” confidence in their local police, this figure jumps to 20.7% for blacks.
- A Michigan State Police poll indicated that African American drivers were 2.36 times more likely than whites to be ticketed, although they were pulled over at about the same rate. **This indicates that the action of the officer and motorist after the stop may be causing the difference.**
- 25% of blacks said they never received a satisfactory explanation of why they were pulled over.
- Minority citizens may be more distrustful of the police, so less likely to discuss the violation with the officer.
- Poor interaction or a perceived hostile attitude by the motorist due to poor officer/motorist communications may influence the officer’s decision to issue a ticket.
- Another Michigan poll showed that the 70% overall statewide compliance with the mandatory safety belt law dropped to 54% in the case of African-Americans, and only 23% for young African-American males.
- **The final precipitating event in nearly every serious race riot in the United States in modern history, was a traffic stop in a minority neighborhood.**
- The Watts riot in Los Angeles in August, 1965 occurred when Marquette Frye, an African American, was stopped for doing 50 mph in a 35 mph zone, and was discovered to be under the influence of alcohol. While waiting for a van to take Frye to the booking station, Frye began “dancing a jig” out in the street. The officers ignored him and the gathering crowd, concentrated on filling out forms and calling a wrecker, treating the arrest as too routine, until the situation exploded out-of-control.

- The Miami riot in December 1979 began with the apprehension of Arthur McDuffie, an African American insurance salesman who was stopped for running a red light on his motorcycle. As the officer approached the stopped bike, McDuffie suddenly accelerated and took off. After an 8-minute chase, he was apprehended by 4 Miami officers and died at the scene 10 minutes after a physical confrontation there. Miami went up in flames. The current furor over “racial profiling” has kept the flames of such passion stoked.
- African-American and Hispanic traffic death rates nationally are about 3 times those of Caucasians. If our objective is to save lives, we cannot disengage from traffic enforcement in minority neighborhoods. We need to do a better job of educating citizens in all parts of the community on the need to wear safety belts and use child safety seats.
- Members of minorities strongly support police traffic enforcement, but only when they believe it is being fairly targeted and that they are not being singled out for unfair treatment.

**ASK:** What United States Constitutional rights should we consider with regard to conducting traffic stops?

What citizen rights should we be concerned with?

**PRESENT:**

**Reasonable Expectation of Privacy. The U.S. Constitution contains clauses that establish the right of privacy - the “right to be left alone” by the police if citizens are not breaking the law.**

- It is this right, guaranteed by the Fourth Amendment, that separates the United States from totalitarian dictatorships where people can be stopped at random, forced to produce identity cards and searched, often simply because they disagree with the government.
- Everyone, citizen and alien alike, within our borders is entitled to walk and drive our streets and highways and move about in our public places free from police interference so long as they obey the law.
- However, this “right to be left alone” also means that innocent citizens are entitled to be protected from criminals and careless and reckless drivers. Police traffic stops and field interviews are an important tool in protecting these citizens.
- The fact that a person is African American, Hispanic, Asian or of another ethnic group is not a basis for focusing suspicion of wrongdoing on that person. However, it is not illegal to target suspected violators based on their conduct.
- It is also not illegal to focus attention on a person of a particular race or background if the officer has specific suspect information. For example, if a bulletin is issued for a black male suspect wearing a red shirt, an officer is justified in stopping black males who fit that specific description.
- It is also not illegal to have a voluntary, consensual conversation with a citizen, or to stop them and offer assistance if you believe they are injured, ill, lost, confused, or if there appears to be a vehicle defect.

**Equal Protection Under the Law** - The Fourteenth Amendment to the U.S. Constitution guarantees every person within our borders equal protection under the law, and ever since Mapp v. Ohio in 1961, the Supreme Court has declared that no State can abridge this right that is given under the Federal Constitution. Rich or poor; black, white, Hispanic, Asian or Native American; Democrat, Republican or Independent; Catholic,

Protestant, Jew, Muslim, or atheist, every person is entitled to be treated the same, under similar circumstances.

**ASK:** Can we make a traffic stop without reasonable suspicion?

**PRESENT:**

**Reasonable Suspicion** - The U.S. Constitution and state and federal court decisions show us the way to use this important policing tool - traffic stops - in a constitutional manner.

They tell us that we can only stop a person on foot or in a vehicle on **reasonable suspicion**. This is also sometimes called articulable suspicion, because we must be able to articulate (put into words) the reason for the stop.

Reasonable suspicion is something less than the probable cause that is required to justify a full custody arrest. It arises when you are able to state specific observations or facts that support your suspicion that a person:

- is committing a crime
- is about to commit a crime
- has committed a crime

It can be bolstered when your observations are combined with your training and experience. It can also involve information received from credible outside sources or third parties

**Traffic Violations as Reasonable Suspicion for a Stop** - Traffic violations are a good source of reasonable suspicion to stop a vehicle and make further inquiries - inquiries that often uncover evidence of a more serious crime, because the officer's awareness and investigative skills helped to turn a stop for a minor infraction into a felony arrest.

The U.S. Supreme Court, in Whren v. U.S., 527 U.S. 806 (1996) has said that the courts are not required to consider an officer's *motive* for stopping a vehicle, as long as the driver violated a traffic law or ordinance. Pretextual stops do not violate the Constitution. Thus, a detective who suspected that a vehicle contained drugs and stopped the driver because he failed to signal for a turn, made a valid stop regardless of the fact that the detective was not assigned to traffic patrol and did not normally stop vehicles that failed to signal for turns.

**It is legal to use a traffic violation as a pretext to stop someone you suspect of illegal behavior, but it is clearly wrong, both legally and ethically, to stop someone of a particular race, ethnicity, sex, or sexual orientation for a traffic violation that you would not stop anyone else for.**

Despite the holding in Whren v. U.S., that pretextual stops are allowable as long as a traffic law was violated, in Holland v. City of Portland, the First Circuit Court of Appeals said that an objective showing that blacks were arrested more often for a specific, widely committed offense could bring a different result than Whren.

In U.S. v. Sokolow, 109 S.Ct. 1581 (1989) the U.S. Supreme Court upheld drug courier profiles, as long as they were rationally related to the suspected crime, so that reliance on the profile was reasonable under the Fourth Amendment.

In Travis v U.S., cert. denied, 116 S.Ct. 738 (1996) the Supreme Court ruled that police investigations which have a disproportionate impact on minorities offend the Constitution if the targeting is based *solely* on race.

In U.S. v. Lorenzo Sanchez Guillen, #97-50645, the Ninth Circuit Court of Appeals ruled that Border Patrol agents cannot consider “Hispanic appearance” as a factor in deciding to stop and question motorists near the Mexican border, because there are many law-abiding persons of Hispanic appearance crossing the border every day for legitimate reasons.

The court said, “Stops based on race or ethnic appearance send the underlying message to all our citizens that those who are not white are judged by the color of their skin alone.”

“Such stops also send a clear message that those who are not white enjoy a lesser degree of Constitutional protection - that they are in effect assumed to be criminals first, and individuals second,” the Court said.

**ASK:** What can we as officers do to minimize tension and maximize cooperation?

**PRESENT:**

- We can reduce the likelihood that we and our fellow officers will behave insensitively toward minorities, by eliminating the use of racially charged stereotypes, racial jokes and epithets at all times.
- During the investigation of the Los Angeles Police Department that followed the Rodney King case, investigators downloaded hundreds of racially inappropriate messages that were being routinely exchanged on mobile data terminals in LAPD cruisers, and used these as evidence of racial discrimination by officers.
- As police officers sworn to uphold the Constitution and laws, we need to support that Constitution and those laws in our everyday actions. The law recognizes that it is probably an inevitable part of the human condition to feel prejudice, but it is both legally and morally wrong to **act out** those prejudices by **discriminatory behavior**.
- Whether a warning or a ticket is issued, by not arguing the merits of the case with the violator, we can still allow him or her to give an explanation for the violation. It costs nothing to listen respectfully, and many people calm down and are more accepting if they have a chance to explain their point of view, even though they still receive a citation.
- We should take the opportunity of a traffic stop, not to “lecture” the motorist, but to point out the seriousness of the crash rate or any other circumstances in the locality that make the enforcement action necessary.
- We should allow the violator the opportunity to “save face” by discussing the violation out of the earshot of passengers and bystanders. Offer instructions as to how the citation is to be handled by the violator, and help him or her back into the traffic stream.

- Too many officers become **occupationally arrogant** over a period of time, especially when they meet a motorist who is in “**contempt of cop**” and shows a disrespectful attitude. Too often, officers allow their ego to get in the way, and are unable to **disengage** from an argument. They find themselves “hung out on a limb”, with no options. **It pays to be courteous and professional in traffic stops. Why? Your reputation and that of the department depend on it.** The story of one rude officer spreads from mouth to mouth until people assume that all officers are rude.
- **When you are communicating across two or more different cultures, even more skill may be required. It is possible to insult a member of another culture without realizing that your words or actions will have that effect.**
- When a former United States President visited Australia, he flashed the “peace sign” to the crowds from his limousine. To Australians, that particular gesture means the same as flashing the middle finger in the U.S. culture, and thus the President insulted those gathered along the motorcade route.
- Different people communicate differently. It may or may not be due to cultural differences.
- **Language barriers can make cross-cultural communications more difficult.**
- The deaf community and those for whom English is a second language are examples of where language barriers can impede your communications ability. If you encounter a deaf person who is literate in English, they can often read lips. You can also communicate by writing notes back and forth.
- Many recent immigrants or foreign tourists may not be fluent in English. Communications with them can be even more difficult. They still have the same concerns over what they have been stopped for, what you are doing, and what their obligations will be. With persons where a language barrier exists, the following general rules will be helpful:
  1. Don’t talk down to people or treat them in a demeaning manner.
  2. Take your time when dealing with someone from a different culture. Don’t hurry.
  3. Show respect.
  4. Listen and explain, patiently.
- **Establishing rapport at the roadside** – To gain rapport with the occupants of a vehicle, start with a non-confrontational greeting and self-introduction:
  1. Make sure the look on your face, your tone of voice, body position, gestures, and the words you use portray professionalism and respect, along with a sufficient degree of assertiveness.
  2. Don’t use an authoritarian approach to begin with; try a friendly one. An authoritarian approach will increase resentment and aggressiveness or make people feel trapped. Either way, it can lead to non-cooperation or danger.
  3. Let the person talk, even if you do not understand them. It is important to start the conversation flowing.
  4. **Miranda** warnings are not necessary for general, on-the-scene questioning where the person is not under arrest, **cf. Berkemer v. McCarty.**

- **Listening skills. Listening is an art, and is demanding work:**  
Most people speak at 125 words per minute, but we can receive and understand words at about 400 words per minute. This means we tend to let our minds wander, and not pay attention when others are speaking.
- As police officers, we are too accustomed to asking the questions and not accustomed enough to listening to the answers. Stay focused. It is not enough to listen - we must also **convey to the other person** that we are listening to them, and are interested in what they are telling us.
- **Officer-motorist Relations** - Once you are at the car, “officer-motorist” relations have begun:
  1. You should strive to maintain the proper balance between command presence enough to control the stop, and projecting a courteous, non-confrontational attitude that is assertive instead of aggressive; suspicious without projecting too suspicious an attitude.
  2. Recently, several minority groups were asked what they expected for behavior from a police officer that stopped them. Universally, they said, “Greet us in a friendly manner, and tell us why you stopped us.”
  3. Over time, many officers develop skills for interacting with persons that they have stopped that minimize tension and resentment. For other officers, a standardized approach, or script, has been found to minimize officer/violator conflict, and enables you to testify in court as to what you said to the violator, because it is your customary method of approach.
  4. **Whether dealing with minorities or white citizens, it’s not the traffic stop; it’s the conduct behind the stop that makes the difference between building a bridge to the community and putting a hole in that bridge.**
  5. Some officers have the knack of being able to give out ticket after ticket and never generating a public complaint - often, even receiving a “thank you” from the ticketed motorist.
  6. The motorist is not thanking the officer because they got a ticket or have to pay a fine, but because the officer treated them as the officer would wish to be treated him/herself under the same circumstances, or as he or she would wish a friend or relative to be treated. **It is the golden rule of traffic stops to never treat anyone in a traffic stop in a way that you would not want to be treated if you or one of your family members were stopped by the police.**
  7. Be a good listener. Look at every stop as an individual case. If the motorist wants to give an excuse, listen politely. It costs nothing to listen, and if they tell one story to you at the roadside and a different one in court, you can use that to discredit their testimony.
  8. Veteran officers who have stopped thousands of cars during their career, are no longer surprised to encounter a person at a social event that the officer stopped 10 or more years ago, and have that person recite in vivid detail everything that took place. To the officer at the time, it was just another traffic stop, but to that person it was a major event in their life, and if they are an average citizen, one of a very few formal interactions they will ever have with an on-duty police officer.
  9. Citizens will form their opinion of you, your department, and officers in general from that one stop, and broadcast that opinion widely.

10. People like to talk about their encounter with a police officer. Others, who have not had such an encounter, form their opinions from what they hear from friends.
11. Remember that you didn't stop 5 cars last night; you stopped **5 people** in cars!

**ACTIVITY:** Minimizing Conflict

**HANDOUT 1:** Minimizing Conflict

<b>Directions</b>
-------------------

Using the following steps demonstrate to the students a protocol for executing a traffic stop. After you have demonstrated divide the students into groups of two and have the students conduct a role-play.

<p><b>Instructor Note:</b> Ask for a student volunteer to act as a disgruntled driver who was just stopped for going 55 in a 35-mile per hour zone. Demonstrate to the students how to conduct the traffic stop under these conditions using the steps below.</p>
---

**Role-play #1:** For this role-play one student will act as the officer conducting a traffic stop. The officer has just witnessed a driver run a stop sign. The driver rolled through the stop sign without making a complete stop. The driver insists that the pause at the stop sign constituted a complete stop. The officer must use the protocol for minimizing conflict and other steps learned in this module to conduct a legal, safe and courteous traffic stop.

**Role-play #2:** For the second role-play the students will switch roles. The student previously acting as the officer will now become the driver and vice versa. The officer has just witnessed a driver swerve from the inside of the lane to the outer edges of the driving lane and appears to be driving reckless. On close observation the officer could see that the driver was talking on a cell phone and was not wearing a safety belt. The driver insists that he/she did absolutely nothing wrong. The officer must use the protocol for minimizing conflict and other steps learned in this module to conduct a legal, safe and courteous traffic stop.

**The best verbal approach to minimize conflict:**

1. Give a greeting.
2. Introduce yourself cordially.
3. Tell the person why they are being stopped or detained. Describe what you observed. You can help reduce tension by avoiding finger pointing. Years ago, officers were taught to get the person's documents in hand before telling them why they were stopped. Some courts have now ruled that the person is entitled to know the reason for the stop before producing documents.
4. Invite the driver to offer a reasonable excuse. "Was there some reason, ma'am, why you didn't stop?" Rather than leading to arguments, this approach allows the violator an "escape valve", and may further reduce tension.
5. *Politely* ask for identification and any required documents. "May I see your license, registration, and proof of insurance, please?" When accepting the papers, have the driver reach outside the car to give them to you - do not reach your hand inside the vehicle and possibly get it trapped.
6. Take the papers with your non-gun hand, and say, "Thank you." Obtain another document of identification if the driver has no license. If you see, hear, or smell anything that leads you to suspect any

additional infractions of the law, inquire further.

7. Once satisfied that there are no further violations, excuse yourself and request that all persons remain in the vehicle.
8. If you will be issuing a citation, return to your police car, being alert to traffic, while continuing to observe the violator's vehicle, and complete any necessary paperwork. For your own protection, it is important to document every stop. **Take appropriate, recorded enforcement action at every stop – a citation, a warning, or an arrest.**
9. In determining whether to issue a warning or initiate a court action, weigh the seriousness of the offense, the road, weather, and traffic conditions, and the motorist's driving record.
10. Avoid issuing "attitude tickets", where you cite or arrest a motorist for something you would normally give a warning for, simply because you feel the motorist's behavior toward you was not sufficiently respectful.
11. If at any time during the contact you detect furtive conduct or other danger or feel that you will need assistance on a physical custody arrest or will be requesting a consent search, **be cognizant that the danger level has escalated and consider the advisability of backup.**
12. If there is no reason to hold the motorist further, return cautiously to the vehicle and inform the driver as to what action you have taken, and anything the driver must do in response to it, such as contacting the court, paying the fine, etc. Explain alternatives, but do not attempt to predict the actions of the court or give legal advice.
13. If the driver indicates he or she wishes to make a complaint against you, politely inform them how to do so, and be sure you notify your supervisor of that fact before the end of your shift.
14. If the driver is upset, give him or her time to calm down before they resume driving. Try to defuse the tension.
15. Return the motorist's documents, give them a copy of the warning or citation, and any public information pamphlets that the department provides.
16. Follow with an appropriate closing. If the driver was cooperative, thank him or her for their cooperation. If the driver is still angry, simply say, "Please drive safely" **not** "have a nice day!"
17. Make sure the driver is able to safely re-enter the traffic stream, then return to your vehicle and clear the stop with the communications center.
18. Your communications skills or lack thereof, will determine how that citizen feels about you, the department, and law enforcement in general.

**SUMMARIZE:** Through professional traffic enforcement we can reduce crime, make the public feel safe and encourage motorists to drive safer. We must act legally and ethically in the enforcement of our traffic laws. Through the use of good interpersonal skills we can develop a rapport with our citizens and improve officer-motorist relations. All of the community should feel that they are benefiting from our actions.

## HANDOUT # 1: THE BEST VERBAL APPROACH TO MINIMIZE CONFLICT

1. Give a greeting.
2. Introduce yourself cordially.
3. Tell the person why they are being stopped or detained. Describe what you observed. You can help reduce tension by avoiding finger pointing. Years ago, officers were taught to get the person's documents in hand before telling them why they were stopped. Some courts have now ruled that the person is entitled to know the reason for the stop before producing documents.



4. Invite the driver to offer a reasonable excuse. "Was there some reason, ma'am, why you didn't stop?" Rather than leading to arguments, this approach allows the violator an "escape valve", and may further reduce tension.
5. *Politely* ask for identification and any required documents. "May I see your license, registration, and proof of insurance, please?" When accepting the papers, have the driver reach outside the car to give them to you - do not reach your hand inside the vehicle and possibly get it trapped.
6. Take the papers with your non-gun hand, and say, "Thank you." Obtain another document of identification if the driver has no license. If you see, hear, or smell anything that leads you to suspect any additional infractions of the law, inquire further.
7. Once satisfied that there are no further violations, excuse yourself and request that all persons remain in the vehicle.
8. If you will be issuing a citation, return to your police car, being alert to traffic, while continuing to observe the violator's vehicle, and complete any necessary paperwork. For your own protection, it is important to document every stop. *Take appropriate, recorded enforcement action at every stop – a citation, a warning, or an arrest.*
9. In determining whether to issue a warning or initiate a court action, weigh the seriousness of the offense, the road, weather, and traffic conditions, and the motorist's driving record.
10. Avoid issuing "attitude tickets", where you cite or arrest a motorist for something you would normally give a warning for, simply because you feel the motorist's behavior toward you was not sufficiently respectful.
11. If at any time during the contact you detect furtive conduct or other danger or feel that you will need assistance on a physical custody arrest or will be requesting a consent search, be cognizant that the danger level has escalated and consider the advisability of backup.
12. If there is no reason to hold the motorist further, return cautiously to the vehicle and inform the driver as to what action you have taken, and anything the driver must do in response to it, such as contacting the court, paying the fine, etc. Explain alternatives, but do not attempt to predict the actions of the court or give legal advice.
13. If the driver indicates he or she wishes to make a complaint against you, politely inform them how to do so, and be sure you notify your supervisor of that fact before the end of your shift.

## **HANDOUT # 1: THE BEST VERBAL APPROACH TO MINIMIZE CONFLICT**

14. If the driver is upset, give him or her time to calm down before they resume driving. Try to defuse the tension.
15. Return the motorist's documents, give them a copy of the warning or citation, and any public information pamphlets that the department provides.
16. Follow with an appropriate closing. If the driver was cooperative, thank him or her for their cooperation. If the driver is still angry, simply say, "Please drive safely" **NOT** "have a nice day!"
17. Make sure the driver is able to safely re-enter the traffic stream, then return to your vehicle and clear the stop with the communications center.
18. Your communications skills or lack thereof, will determine how that citizen feels about you, the department, and law enforcement in general.

## HANDOUT # 2: THE GALLUP POLL ON RACIAL PROFILING

November 16, 1999

"It has been reported that some police officers stop motorists of certain racial or ethnic groups because the officers believe that these groups are more likely than others to commit certain types of crimes. Do you believe that this practice, known as 'racial profiling,' is widespread, or not?"

	All	Blacks	Whites
<b>Is Widespread</b>	<b>59%</b>	<b>77%</b>	<b>56%</b>
Is NOT Widespread	34%	16%	38%
Don't Know/Refused	7%	7%	6%

"Do you Approve or Disapprove of the use of 'racial profiling' by police?"

	All	Blacks	Whites
Approve	14%	9%	15%
<b>Disapprove</b>	<b>81%</b>	<b>87%</b>	<b>80%</b>
Don't Know/Refused	5%	4%	5%

"Have you ever felt that you were stopped by the police just because of your race or ethnic background?"

	All	Blacks	Whites
<b>Yes</b>	<b>11%</b>	<b>42%</b>	<b>6%</b>
No	89%	57%	94%
Don't Know/Refused	-	1%	-

## **APPENDIX A: DISCRIMINATORY PROFILING INSTRUCTOR PRE-READING**

The goal of the 4-hour discriminatory profiling module is to emphasize effective law enforcement without regard to race, ethnicity or other characteristics.

Too many of our citizens have cause to doubt our nation's justice, when the law points a finger of suspicion at groups, instead of individuals. All our citizens are created equal, and must be treated equally.

Among licensed drivers only, a larger percentage of blacks (12.3%) than whites (10.4%) were driving a vehicle that police pulled over in a traffic stop in 1999.




**NOTE:** On a per capita basis in 1999, the rate of police-citizen contact for whites was about 17% higher than for blacks and 32% higher than for Hispanics. The rate of contact for males was about 20% higher than females and rates of contact varied inversely with age: those age 18 to 19 experienced a rate of contact 160% above that of those age 50 or older.

**Police - Citizen contact, 1999:** Twenty-one percent of all Americans 16 years old or older had contact with the police during 1999. 52% of these face-to-face interactions were during traffic stops.

Eighty-four percent of the drivers said they were stopped for a legitimate reason, and 90% said the police officer behaved properly during the stop.

"*Driving While Black*" clearly defines the system officially known as CARD (class, age, race, and dress) and offers advice about how to handle potentially life-threatening situations with the police.

**Encounter or Arrest:** Three levels of police - citizens encounter:

-  Consensual encounter
-  Investigative "stop"
-  Seizure a.k.a. Arrest

**NOTE:** From monograph, "force or threatened force used in less than one percent of all police-public interactions." U.S. Department of Justice Bureau of Justice Statistics. March 11, 2001. (NCJ-184957)

"*Driving While Black*," by Kenneth Meeks, Broadway Books, New York, 2000.

To stay focused on the reason for the stop, without allowing bias and prejudice to influence your actions, you need to understand the legal basis for the stop. This is also important because of the exclusionary rule, which is prospective in nature and effect. A bad stop can lead to the suppression of all evidence observed, seized or derived from the stop. *Popple v. State*, 626 So.2d 185, (Florida 1993)

### **Police-Citizen Encounter:**

When a police officer comes into contact with a citizen in a voluntary manner, without having conducted any sort of stop, this is an "encounter". In order to conduct an encounter the officer need have no suspicion that the individual is involved in any sort of criminal activity. To support the voluntary nature of such an encounter, courts will look to such factors as whether the individual was actually, physically, stopped by the officer from going on his way, whether the individual was free to leave or his freedom of movement was restricted in any way, and whether the officer was simply asking questions of the individuals (any demands made by the officer can turn an encounter into a stop). During an encounter, a citizen is free to choose to answer the officer's questions or not, may choose to stay or walk away.

## **APPENDIX A: DISCRIMINATORY PROFILING INSTRUCTOR PRE-READING**

Consensual encounter: Not every police-citizen encounter invokes the fourth amendment. Minimal police contact involving a form of seizure.

Identifying characteristics: Officer cannot hinder or restrict person's freedom to leave, or freedom to refuse to answer inquiries.

### **Second level encounter – “Stop:”**

A “Stop” invokes the fourth amendment. A “stop” is permissible when the detention is temporary and reasonable under all the circumstances providing the officer with a “well founded suspicion” based upon articulable facts.

A Stop may **NOT** be based on a hunch, gut feeling, or bare suspicion. It may be based on training and previous experience. A “stop” that is lawful may also involve a limited search, or “frisk” of the individual for weapons. To conduct a frisk the officer must be justified in believing the person is armed or presents a threat to the officer's safety.

### **Stop-and-Frisk:**

Stop – Purpose: When an officer reasonably believes that a person has committed, is committing, or is about to commit a crime, the officer may temporarily detain such a person for the purpose of ascertaining the identity of the person and the circumstances surrounding the person's activities. F.S. 901.151(2)

### **NOTES:**

*Florida v. Royer*, 103 S. Ct. 1319 (1983)  
*State v. Simmons*, 549 So.2d 785 (2DCA 1989)  
*State v. Starke*, 574 So.2d 1214 (2DCA 1991)  
*Brown v. State*, 714 So.2d 1191 (4DCA 1998)  
*Popple v. State*, 626 So.2d 185 (Fla.1993)  
*Carter v. State*, 454 So.2d 739 (2DCA 1984)

### **Verbalize!**

**NOTE:** *Wilson v. State*, 569 So 2d 516 (4dca 1990)

Stop and Frisk cannot be your “regular practice.” You must be able to VERBALIZE **factual** basis of threat or fear for your safety.

**Stop - Duration and Location:** No person shall be temporarily detained longer than is reasonably necessary to effect the purpose of the stop. Such temporary detention shall not extend beyond the place where it was first affected or the immediate vicinity thereof. F.S.901.151(3)

**Stop - Arrest or Release:** If at any time after the stop, probable cause for arrest of the person shall appear, the person shall be arrested. If, after an inquiry no probable cause for the arrest of the person shall appear, the person shall be released. F.S. 901.151.(4)

**Frisk - Scope and Purpose:** When an officer engaged in a stop has probable cause to believe that the person whom the officer has temporarily detained, is armed with a dangerous weapon and therefore offers a threat to the safety of the officer he may search the person only to disclose the presence of a weapon. If a weapon or any evidence of a criminal offense is disclosed it may be seized. F.S.901.151(5).

## **APPENDIX A: DISCRIMINATORY PROFILING INSTRUCTOR PRE-READING**

**Plain-Feel Doctrine:** There is no distinction as to which sensory perception the officer uses to discover contraband. The sense of touch, grounded in experience and training is as reliable as recognizing the object as contraband by sight. If the object contour and mass makes its identity immediately apparent its discovery is legitimate and it may be seized.

### **NOTES:**

*Minnesota v. Dickerson*, 113 S. Ct. 2130 (1983) - Plain Feel







*Michigan v. Long*, 103 S. Ct. 3469 (1983) - Plain View

*Jordan v. State*, 664 So.2d 272 (5DCA 1995) - proper testimony to support plain feel

**Plain-Feel Doctrine:** Basis for opinion:

"In this case, the officer did not offer testimony about his experience with crack cocaine. Never testified that he had seen crack cocaine before he seized the piece, or, if he had, how many times. The officer never testified that he could detect cocaine based upon his tactile experience. In fact, the officer never testified about training, personal experiences, or arrests involving crack." *Jordan v. State*, 664 So.2d 272 (5DCA 1995)

**Stop or Arrest:** Factors reasonably suggesting possible criminality:

-  Time of day
-  Day of week
-  Location
-  Physical appearance of suspect
-  Appearance and manner of operation of any vehicle involved
-  Anything unusual based upon officer's knowledge, training and experience

**Factor supporting a temporary detention:** "Nervous evasive behavior is a pertinent factor in determining reasonable suspicion." Evidence of flight is relevant to infer consciousness of guilt, which allows officers to stop the fugitive and investigate further.

*Jordan v. State*, 664 So.2d 272 (5DCA 1995):

"Unlike the deputy in *Doctor* who testified that, in addition to 250 arrests for possession of a controlled substance, the deputy had been present during approximately 1000 arrests, and had seen or felt crack cocaine approximately 800 times, the officer in this case offered no predicate information to support his ability to detect crack cocaine by feel. *Doctor*, 596 So.2d at 445. Absent this information, no factual basis existed to approve the officer's seizure of the cocaine. *Thomas*, 644 so.2d at 598-99. In as much as *Dickerson* holds that the officer's feel of an object must convey that the object is contraband, we conclude that, in denying *Jordan's* motion to suppress, the trial court misapplied the law."

### **NOTES:**

*States v. Stevens*, 354So.2d 1244 (4DCA 1978)

*Illinois v. Wardlow*, 120 S.Ct. 673 (2000)

Avoid profiling issues by sticking to **FACTS**, not supposition that can be based on bias and prejudice.

**Evidence of Flight:** Presence in a "high crime area" coupled with unprovoked flight at the presence of law enforcement constitutes reasonable suspicion to justify a police stop.

## **APPENDIX A: DISCRIMINATORY PROFILING INSTRUCTOR PRE-READING**

“Headlong flight---wherever it occurs---is the consummate act of evasion: it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such.” *Illinois v. Wardlow*, 120 s. ct. 676 (2000)

**Third, level encounter – “Seizure”**: A “seizure” invokes the fourth amendment.

A seizure or a formal arrest must be based upon **PROBABLE CAUSE** to believe that a crime has been or is being committed. A seizure does not occur until the person is in actual physical custody, subdued by an officer, or submits to the officer’s authority.





Reference Stop-and-Drop/Drop-and-Stop:

**NOTE**: “Unprovoked flight is simply not a mere refusal to cooperate (with the police). Flight by its very nature is not “going about one’s business;” in fact, it is just the opposite. Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual’s right to go about his business or to stay put and remain silent in the face of police questioning.” *Wardlow*.

“High Crime Area” claim needs to be supported by crime stats.  
*California v. Hodari*, 111 S. Ct. 1547 (1991):

Assuming the officer’s ability to articulate on the witness stand at the Motion to Suppress the reasons for the officer’s presence at the scene, including a detailed description of drug or criminal activity sought to be interdicted, including, but not limited to, a description of the area as a “high crime” spot supported by department statistics of calls for service and arrests, coupled with the defendant’s unprovoked flight from the area, all would constitute founded suspicion, if not reasonable for grounds, to stop and detain (seize) the suspect. That being the case, whether the “drop” occurred prior to, or subsequent to, the detention of the subject the contraband recovered should not be suppressed and should be admissible in the criminal case.

**Basic Sources of Officer Knowledge**: Sources of Information:

-  DMV
-  Court Records
-  Law Enforcement
-  Civilians

**Basis of Officer Knowledge**: Fellow Officer Rule (FOR):

The collective knowledge of police investigating a crime is imputed to each member of the team. An actual request or directive by one officer to another to arrest or search is not a prerequisite to this Rule. Rule will not make a “bad” arrest “good” because of the good faith reliance.




**NOTES**: Fellow officer rule applies to frisk situations, based upon armed and dangerous flier from one law enforcement officer to another. *U.S. v. Hensley*, 105 S. Ct. 675 (1985). Eagle, September 1999, page 2, col. 1.

Fellow Officer Rule (FOR) has been applied to search warrant information supporting PC Affidavit. *State v. Peterson*, 739 So.2d 561 (Florida 1999) and *U.S. v. Ventresca*, 380 US 102 (1965).




Applies to misdemeanors as well as felonies; *DHNV v. Leonard*, 718 So.2d 314 (5DCA 1998).

## **APPENDIX A: DISCRIMINATORY PROFILING INSTRUCTOR PRE-READING**



**Informant Tips:** The law recognizes three types of “tipsters.”

-  Citizen informant
-  Confidential informant
-  Anonymous informant

**Informant Tips:** Citizen Informant:

-  An untested source
-  Considered more reliable than anonymous:
- ✓ Citizen has come forward
- ✓ Has provided his/her identity
- ✓ Has related observations
- ✓ Available for future questioning
- ✓ Can be corroborated
-  Will be almost invariably been found sufficient to justify police action.

**Anonymous Tip:**

-  Source is an unknown individual
-  Content of tip must be proven reliable:
- ✓ Merely providing identity, dress description and/or location insufficient, even if corroborated.
- ✓ Tip must have ability to predict future behavior, thus demonstrating inside information.
- ✓ Predicted behavior must be corroborated by police

Tip must be reliable in its assertion of illegality not just in its tendency to identify a person.

**Is there a Firearm Exception?:** Given public safety issue by hand guns nationally there should be a firearm exception to traditional Terry (stop and frisk) stop.

**U.S. Supreme Court Refused Firearm Exception:** “Under such an exception, a (gun tip) would justify a stop and frisk even if the accusation would fail standard pre-search reliability testing. We decline to adopt this position.”

*Florida v. J.L.*, U.S. Supreme Court, 3/28/01  
*J.J. v. State*, 727 So.2d 204, 206 (Florida 1998)  
*Alabama v. White*, 110 S. Ct. 2412 (1990)

**NOTE:** *Florida v. J.L.*, U.S. Sup. Ct., 3/28/00 “If police officers may properly conduct *Terry* frisks on the basis of bare-boned tips about guns, it would be reasonable to maintain under the above cited decisions that the police should similarly have discretion to frisk based on bare-boned tips on narcotics. As we clarified when we made indicia of reliability critical in *Adams and White*, the fourth amendment is not so easily satisfied.”

The Court did leave the door open when it came to weapons of mass destruction: “We do not say, for example, that a report of a person carrying a bomb need bear the idiocy of reliability we demand for a report of a person carrying a firearm before the police can constitutionally conduct a frisk.”

## **APPENDIX A: DISCRIMINATORY PROFILING INSTRUCTOR PRE-READING**

**Automobile Stops:** Broad discretion:

**Because vehicles are mobile, the U.S. Supreme court has been exceedingly liberal in permitting law enforcement to stop, search and seize vehicles, without the need for profiling.**

**Whren v. United States:** “The constitutionality of a traffic stop is not dependent on the motivations of the individual officers involved, but only whether any probable cause for the stop existed. A valid violation of Florida’s traffic law provides sufficient probable cause to make the subsequent search and seizure reasonable.”

**NOTES:** *Carroll v. United*, 267 U.S. 132 (1925):

The State argues that the reasoning in *Carroll* was based on a motor vehicle’s “ready mobility,” as further explained in *California v. Carney*, 471 U.S. 386 (1985). The basis for the *Carroll* doctrine is that there is a reduced expectation of privacy in regard to a motor vehicle due to the characteristics, use and pervasive regulation. *United State v. Chadwick*, 433 U.S. 1 (1977).

**Whren v. U.S., 116 S. Ct. 1769 (1996):** See also, *Holland v. State*, 696 So.2d 757 (Florida 1997) wherein the Supreme Court found *Whren* binding on Florida courts and overruled *State v. Daniel*, 665 So.2d 1040 (Fla. 1995) that created the “reasonable officer test.”

**Pennsylvania v. Mimms:** “Where a police officer stopped a vehicle for purpose of issuing a traffic summons, ordering the driver to exit the vehicle was reasonable under fourth amendment, in light of officer safety issues. Further, the officer may frisk those persons for weapons if there is reasonable cause to believe they are armed and dangerous.”

**Pennsylvania v. Mimms, 98 S.Ct. 330 (1977):** “The police have already lawfully decided that the driver shall be detained; the only question is whether he shall spend that period sitting in the driver’s seat of his car or standing along side it.” “What is at most a mere inconvenience cannot prevail when balanced against legitimate concerns for the officer’s safety.”

**Caveat:** At footnote 6 of the Supreme Court decision they wrote, “We do not hold today that whenever an officer has an occasion to speak with a driver of a vehicle, he may also order the driver out of a car. We hold only that once a motor vehicle has been lawfully detained for a traffic violation, the police officer may order the driver to get out of the vehicle without violating the fourth amendment’s proscription of unreasonable searches and seizures.”

Officer can also order passenger from vehicle. *Maryland v. Wilson* 519 U.S. 408 (1997) *Doctor v. State*, 573 So.2d 157 (fourth DCA 1991).

**Michigan v. Long:** Even without an arrest, an officer may order the driver out of the vehicle and where the officer reasonably believes that the suspect is dangerous and may gain control of a weapon from within the vehicle, the officer may search the passenger compartment.

**Atwater v. City of Lago Vista:** Atwater’s arrest satisfied constitutional requirements. There is no dispute that Officer Turek had probable cause to believe Atwater had committed a crime (no seat belts) in his presence. Turek was accordingly authorized (not required, but authorized) to make a custodial arrest. *Atwater v. City of Lago Vista*, U.S. Sup. Ct. (4/24/01)

**Michigan v. Long, 103 S. Ct. 3469 (1983):** “Therefore, the balancing required by *Terry* clearly weigh in favor of allowing the police to conduct an area search of the passenger compartment to uncover weapons, as long as they possess an articulate and objectively reasonable belief that the suspect is potentially dangerous.” “In any event, we stress that a *Terry* investigation, such as the one that occurred here, involves a police

## **APPENDIX A: DISCRIMINATORY PROFILING INSTRUCTOR PRE-READING**

investigation at close range, when the officer remains particularly vulnerable in part because a full custodial arrest has not been effected, and the officer must make a quick decision as to how to protect himself and others from possible danger. In such circumstances, we have not required the officers to adopt alternative means to ensure their safety in order to avoid the intrusion involved in a *Terry* encounter.”

***Knowles v. Iowa:*** Without custodial arrest a vehicle search incident to traffic infraction is impermissible. Even when an arrest could be made but a Notice to Appear (NTA) or citation was issued instead.

Search incident to arrest based upon:

1. Officer safety (during close custody arrest).
2. Preservation of evidence.

***New York v. Belton:*** “We hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest search the passenger compartment of that automobile.” “It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment.”

***Automobile Search:*** The scope of the search incident to arrest is the person of the driver, and “the area into which an arrestee might reach in order to grab a weapon or evidentiary items.” The automobile exception to the warrant requirement is based upon its mobility. It has no separate exigency requirement.

### **NOTES:**

*Knowles v. Iowa*, 110 S. Ct. 484 (1999)  
*New York v. Belton*, 101 S Ct. 2860 (1981)  
*Chimel v. California*, 89 S. Ct. 2034 (1969)  
*Maryland v. Dyson*, 119 S Ct. 2013 (1999)

***Wyoming v. Houghton:*** A Police officer with probable cause to search a car may inspect passenger’s belongings found in the car that is capable of concealing the object of the search. Passengers, no less than drivers, have a reduced expectation of privacy with regard to property they transport in cars.

***NOTES:*** *Wyoming v. Houghton*, 119 S. Ct. 1297 (1999), Case involves arrest situation of driver. Passenger exited vehicle-leaving purse in back seat.

However, a different situation arises when there is no arrest and the driver consents to a search of his vehicle. That consent will not extend to property of the passenger known by the officer to be the passenger’s. *Brown v. State*, 2DCA (4/16/01)

***Discriminatory Profiling:*** Factual scenarios should be identified and utilized by the trainer. Factual scenarios can be located through a variety of resources to include:



ACLU’s web page - <http://aclu.org/profiling/>

### **Major City Newspaper Archives:**



LA Times - <http://www.latimes.com/RedirectServlet/services/site/archives/>



NY Times - <http://search.nytimes.com/search/>



Washington Post - <http://www.washingtonpost.com/wp-adv/archives/>



Chicago Tribune - <http://pqasb.pqarchiver.com/chicagotribune/>



Miami Herald - <http://www.miami.com/search>



Orlando Sentinel - <http://pqasb.pqarchiver.com/orlandosentinel>