

“Implicit Bias-De-Escalation-Procedural Justice
A Call for Change in Law Enforcement Training and Operations”©

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Over the last five years there has been criticism of law enforcement in the United States. Prior to 2020, many referred to this criticism as the Ferguson Effect. In 2020, protests and riots erupted following the death of George Floyd in Minneapolis and continued as a number of high-profile law enforcement events occurred or were resurrected. This article looks at some of the training being recommended and outlines action steps that law enforcement might consider as we move forward from these difficult times.

Some of the various trainings being sought include de-escalation, implicit bias, procedural justice, law enforcement legitimacy, and Constitutional law enforcement.

Implicit Bias

When the Legal & Liability Risk Management Institute recently advertised a webinar on Implicit Bias, an officer emailed asking to be taken off the email list. The officer asserted that if LLRMI was going to conduct this type of training, he would not be interested in attending anymore LLRMI programs. At that point I recognized that this officer did not understand implicit bias or the need for such training in law enforcement.

Perhaps one of the best way to understand that implicit bias does not contemplate fault or guilt on the part of the person, but rather recognizes that the human brain categorizes and associates persons and things based on appearance or some other visual characteristic. Sociologist Eduardo Bonilla-Silva refers to the implicit bias related to skin color as “racism without a racist.”

As I think about implicit bias, I recall my fifth-grade teacher telling the story of his rich uncle who owned an enormous farm in the Midwest. One day, his uncle decided to buy two Cadillacs, one to use as a car and one that he would customize as a pickup truck. When he walked into the dealership with a backpack full of cash, but dressed in his farming clothes, the salespeople would not give him the time of day and dismissed him when he tried to approach them about buying the cars. The farmer spoke to the janitor who was able to bring the general manager over. My teacher’s uncle bought the two cars that day, but insisted on one part of the deal, the janitor would get the commission. According to my teacher, his uncle would thereafter buy vehicles from that dealership, but would only deal with the janitor. Thus, implicit bias is not a phenomenon strictly related to race but rather is part of the human condition whereby the brain makes associations based on things like appearance and then quickly categorizes the person or the object based on that appearance. Here, the salespeople looked at the old farmer in his dirty work clothes and through his appearance decided he could not afford a Cadillac and thus was not worth their time.

In law enforcement implicit bias with respect to race might have an impact on events if officers are not in tune to implicit biases, including their own implicit bias. I recall an event when I was a sergeant in the Patrol Division some thirty years ago where officers were dispatched to a social service center for the homeless and poor. The dispatcher indicated that a worker at the social service center was reporting the possible kidnapping of a baby and that they had the baby and the suspect at the center. Before I arrived on scene, some new officers were confirming the report and asking dispatch about any calls reporting a missing or kidnapped baby. When I arrived on the scene and spoke with the man, an older black man who brought the white baby to the social service center, he relayed the following. The mother of the child was known to him as a prostitute and drug user. The man said that the mother many hours earlier had paid him five dollars to watch the baby for one hour. As the time passed and she did not return, he realized the baby needed nutrition and a diaper change. Not knowing what to do, he boarded a bus and brought the baby to the social service center. When I asked the complainant what the man had said and done when he arrived with the baby, she gave an identical story. After scratching my head and wondering how this had turned into a kidnapping, I commended the man for his actions, offered him a ride back to where he had come from and gave him a ten-dollar bill. We took the baby to the hospital and turned the matter over to the Department of Children, Youth, and Families to conduct an investigation into child neglect. As my understanding of implicit bias has matured I often think back to experiences like this and conclude that the assumptions of the social service worker who called 911 as well as first responding officers, who had been primed to think this may be a kidnapping, were likely based on implicit bias and the appearance of an older scraggy-looking black male with a little white baby.

Implicit Bias training is about becoming aware of our own implicit bias so that we can confront them and ensure that these biases do not enter our professional judgments. This type of training is not about racism and it is not about blame. All of the great researchers that have looked at implicit bias make clear that implicit bias is one of the ways that the human brain works. To make this point, I note a quote from Jesse Jackson made a number of years ago asserting:

“There is nothing more painful for me at this stage in my life than to walk down the street and hear footsteps and start to think about robbery and then look around and see it’s somebody white and feel relieved.”

Once it is recognized that we all have implicit bias, we can start to examine how appearances, association, and categorization may impact our initial assessments of events. As we become more familiar with our own implicit bias, we can ensure that these biases do not impact the decision-making process as law enforcement officers. As noted in Sir Robert Peel’s 5th Principle of Policing from 1829 that officers should offer ready *“individual service and friendship to all members of the public without regard to their wealth or social standing...”*

Constitutional Law Enforcement

The one national standard in law enforcement is the United States Constitution. As such it sets the floor but not the ceiling on law enforcement conduct. While states, counties, cities, and agencies can be more restrictive on officer conduct, no entity can grant law enforcement more authority than authorized by the United States Constitution and the decisions of the United States Supreme Court. It should be recognized that in most cases, when an officer is sued, the suit alleges a violation of Constitutional Rights. Thus, not only does an officer who acts Constitutionally avoid liability, they also live up to their oath of protecting the Constitutional Rights of all persons.

Through audits of agencies nationwide, we have observed that many officers, while receiving a Constitutional law component in the basic academy, get very little update training even as the law constantly changes. It is unclear how an officer can be expected to make proper and professional decisions based on legal standards that they are expected to follow but have never been updated on.

Procedural Justice

In 1829, Sir Robert Peel wrote in Principles 2 and 3: *“(2) To recognize always that the power of the police to fulfill their functions and duties is dependent on public approval of their existence, actions, and behavior, and on their ability to secure and maintain public respect. (3) To recognize always that to secure and maintain the respect and approval of the public means also the securing of the willing cooperation of the public in the task of securing observance of laws.”*

In essence, Sir Robert Peel outlined Procedural Justice and Legitimacy of Law Enforcement Authority.

Procedural Justice recognizes that public perception of law enforcement will impact the willing cooperation of the public with law enforcement and that where law enforcement is not trusted, it will be harder for law enforcement to exercise authority.

The principles of procedural justice include Fairness and Consistency in the application of enforcement authority; Impartiality and un-biased decision making; allowing the person to be heard (a voice in the process) so they can tell their side of the story; and transparency in the process.

All training on procedural justice recognizes that officers who are the recipients of procedural justice in their relationships with supervisors are more likely to act in a procedurally just manner in the field.

Studies indicate that an agency that exhibits procedural justice reaps several benefits. The first is more willing cooperation across the board. Persons see law enforcement authority as legitimate and thus more willingly obey the law. As such there is an overall

reduction in crime. As noted by Sir Robert Peel in the 9th principle: *“To recognize always that the test of police efficiency is the absence of crime and disorder and not the visible evidence of police action in dealing with them.”*

Additional benefits include officer safety based on the fact that where individuals respect the legitimacy of law enforcement authority, they are more likely to follow directives of officers when directed. There is also the benefit that occurs with a more cooperative public that willingly assists police in solving crime.

Training on procedural justice should focus on the idea that every interaction is an opportunity for officers to build social capital both for themselves and their agency. Even an outcome such as arrest or citation, when done with respect, transparency and with impartiality can lead to social capital.

During my time as a supervisor I was informed by the Internal Affairs Unit that one of my officers, who was a very good officer had made a really stupid decision when he accepted money from an arrestee for a lost flashlight while in foot pursuit of the arrestee. The arrestee, when asked to give a statement, refused to implicate the officer in any way or to complain about the officer's conduct. Instead the arrestee noted that this officer had arrested him multiple times and always treated him with respect during the arrest. This officer had social capital due to his history with the subject that ultimately saved his career.

De-Escalation

For many years law enforcement has been training officers on methods of de-escalation including things like Verbal Judo, Interpersonal Communication and Crisis negotiation. As part of force training, officers have been trained that due to the fluid nature of any use of force incident, force options may escalate and de-escalate many times during the event.

The current training and policy being suggested goes more to de-escalating the overall event i.e. changing the intensity of the event so that no force will be necessary, rather than recognizing that even in the midst of the force process, de-escalation may occur.

The primary part of this type of event de-escalation training is the idea of slowing things down. Rather than rushing to solve the problem, determine if there is a way to slow things down through calm talking, backing off to create distance, or using obstacles as barriers to give the officer more time and some level of safety. I would note that my review of de-escalation training from throughout the country, to include training we offer, it is recognized that de-escalation can only occur when it is safe for officers and other persons.

When I was in my teens I would routinely ask my Dad, who was a sergeant in the Providence Police Department, if I could do a ride-along with one of his officers. During one of my ride-alongs I recall going to a fast-food establishment where a subject,

obviously in crisis, had thrown his food and drinks around the dining area and was now on the floor under a table hiding. I recall a number of officers shouting loud commands at the subject and attempting to prod him with batons to get him out. The sergeant, my dad, came to the scene and told his officers to step back. My dad, sat down at the table and began calmly speaking with the man under the table. My dad offered the young man a soda and asked if he would sit up and talk with him. Before I knew it, the young man was seated at the table speaking calmly, though still upset with my Dad. Finally he agreed to go to the hospital. Myself and the officer I was riding with took him to the hospital with no further issues.

This event was more than forty years ago but it is clear that my dad knew how to de-escalate an event so that no force would be necessary. As noted in Sir Robert Peel's 4th Principle: *"To recognize that the extent to which cooperation of the public can be secured diminishes proportionately the necessity of the use of physical force and compulsion for achieving police objectives."*

Sir Robert Peel went on to recognize in the 6th Principle: *"To use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public cooperation to an extent necessary to secure observance of law or to restore order; and to use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective."*

Conclusion

It should be recognized that many of the trainings that are being recommended are consistent with law enforcement principles since the beginning of modern policing in 1829. Much of this training is essential to proper and professional law enforcement practices and should be viewed in a positive light by all officers and agencies.

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