



Yolo County District Attorney's Office

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Racial Profiling...



Racial Profiling...

Perception?

Reality?

Does matter?

Racial Profiling ...Defined

- Public
- Our law makers
- ACLU
- The African American male UCD Student

Racial Profiling...



California Penal Code Section 13519.4 (2002)

- “danger”
- “fundamental principles”
- “democratic society”
- “abhorrent”
- “discriminatory practices”

California Penal Code

Section 13519.4

Leg Intent...

- “...more training is required **to address the pernicious practice of racial profiling....**”

Section 13519.4

...a few bad apples

- **“... The good name of these officers should not be tarnished by the actions of those few who commit discriminatory practices.”**

California Penal Code

Section 13519.4

Lawmakers definition

“...the practice of detaining a suspect based on a broad set of criteria which **casts suspicion on an entire class** of people without any **individualized suspicion** of the particular person being stopped.”

In Plain Language

“...using race **inappropriately** as a **primary motivator** even when there is probable cause.”

"All the News
That's Fit to Print"

The New York Times

National Edition

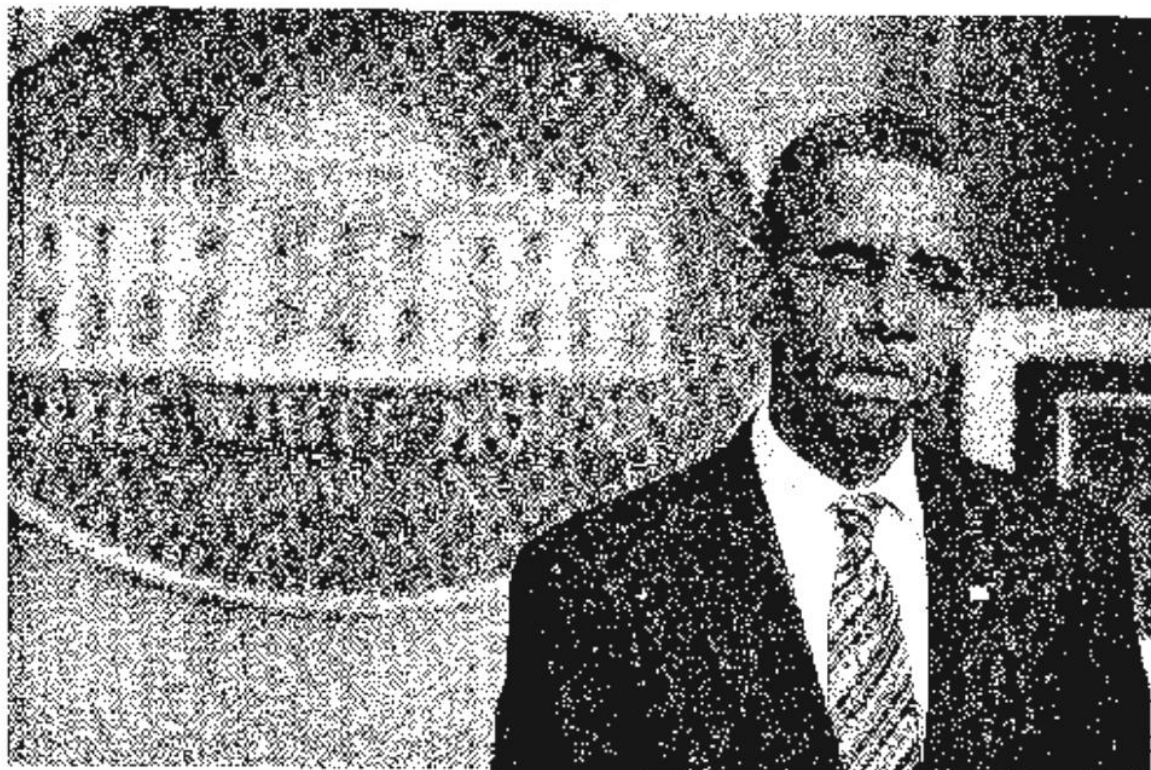
Southern California Daily News,
denying a 3.4 percent increase in
the national flight fee at the
beaches, 50 in 1971, 100 in 1972,
General. (Wright) (Page C3)

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SATURDAY, JULY 25, 2009

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Obama Attempts to Calm Debate Over Gates Arrest

*A Delicate Issue
for Officers on
the Street* | *Says He Regrets
His Criticism
of the Police*

By MICHAEL WILSON
and SONJUNION MOORE

By OSTER HALLER
and HILFENICHOPPER

POLICE departments issue their officers' shields to keep them safe, and their helmets and even shields to protect them from harm and injury. There is nothing in the equipment that to give an officer the right to use force.

That's not so much an effort and the public's safety as anything capped to his hat — is developed in training and his strength differs from one officer to the next. The use of force, in fact, is not at the heart of the debate surrounding the arrest of the Harvard professor.

WASHINGTON — President Obama said Friday he regrets a volatile national debate over the arrest of a black Harvard University professor in the school's police. Just his own comments had influenced tensions and insisted he had not meant to mistreat the arresting officers.

Mr. Obama placed calls to both the professor, Henry Louis Gates Jr., and the man who was arrested, Sgt. James Crowley, on days after saying police had "acted stupidly" last week in July. Mr. Professor Gates' arrest had caused

Criminal Profiling V. Racial (Bias) Profiling

- Training and enforcement mechanisms
- Does racial profiling = racism
- The DA's role

Nothing New...

- 4th Amendment
- 14th Amendment

4th Amendment

- Unreasonable Search & Seizure
- Reasonableness
 - Individualized Suspicion
 - Specific & Articulable facts
 - Objective
 - Math

Whren v. United States

517 U.S. 806 (1996)

- **Pretext Stops**

Whren v. United States

The facts...

- “High drug area”
- Raised Pathfinder truck with temp license plates
- Youthful occupants
- Waiting – 20 seconds
- Officers make U-turn: Pathfinder suddenly turns right, no signal, unreasonable speed

Whren v. United States

The holding...

- “We think these cases foreclose any argument that the constitutional reasonableness of traffic stops depend on actual motivations of the individual officers involved.”

Whren v. United States

The holding...

- “We of course agree with the petitioners that the Constitution prohibits selective enforcement of the law based on considerations such as race.”

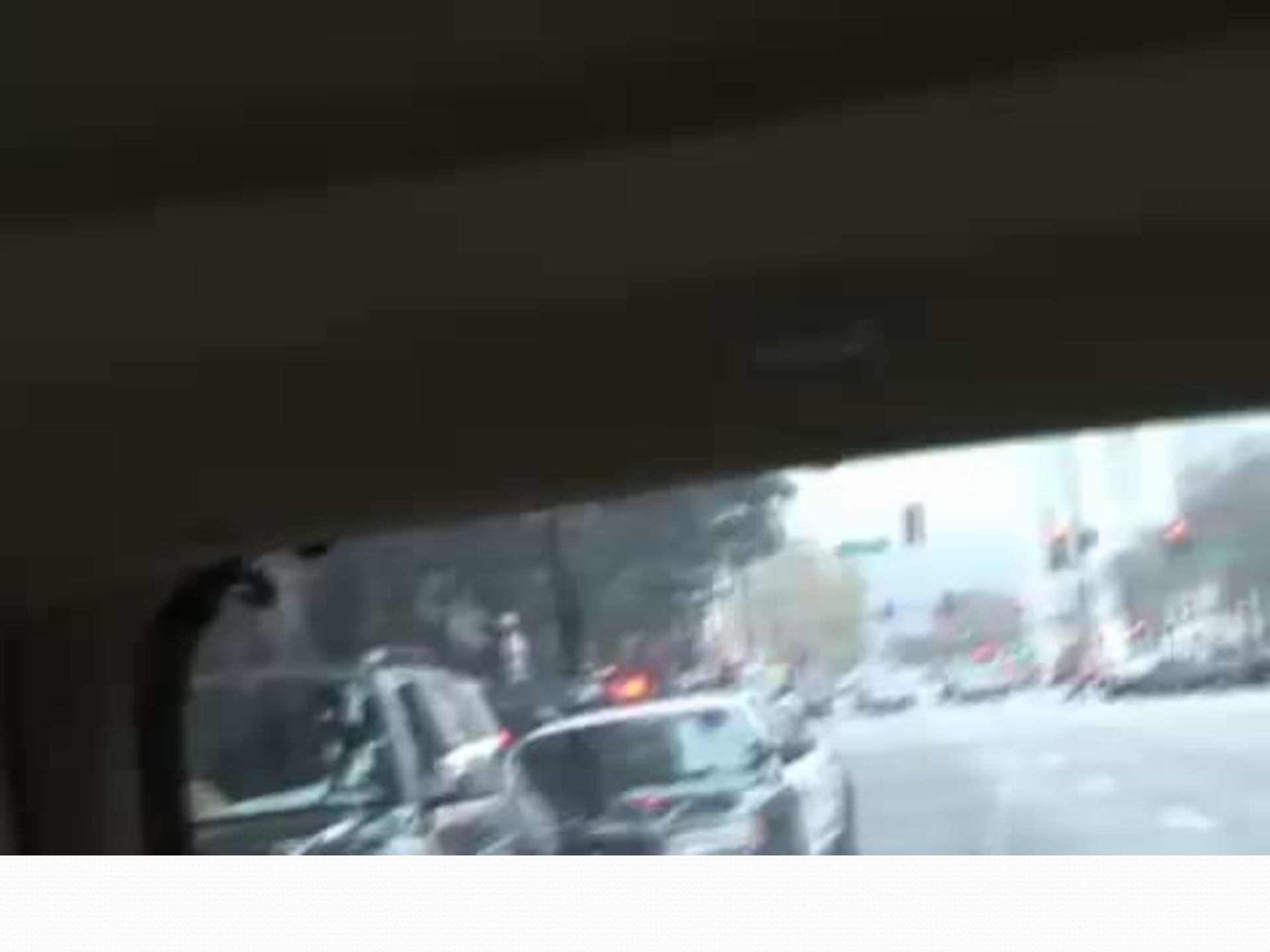
Whren v. United States

Dicta...

- “But the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause [14th A.], not the Fourth Amendment.”

Whren v. United States

- Pretext Stops
- Motivation



The Target

- **Red = Unacceptable to stop or detain**
- **Yellow = Questionable**
- **Green = Acceptable**



Getting to green...

- Time
- proximity to the crime scene
- Behavior
- Descriptors

The Target Exercise

- **Dispatch notifies patrol that there have been residential burglaries in the neighborhood**

The Target

- **Male**
- **Black**
- **18-20 years old**
- **Late model sedan**
- **Body damage on front passenger side**

Illinois v. Wardlow
528 U.S. 119 (2000)

- **Totality of the
Circumstances**

Illinois v. Wardlow

The facts...

- High drug area
- A caravan of officers drove by defendant
- He looked in their direction and fled, running through the gangway and an alley

Illinois v. Wardlow

The holding...

- An individual's presence in a high crime area is not enough

Illinois v. Wardlow

The holding...

- “...it was Wardlow’s **unprovoked flight** that aroused the officers’ suspicion. Nervous, evasive behavior is another pertinent factor in determining reasonable suspicion and headlong flight is the consummate act of evasion.”

Illinois v. Wardlow

The holding...

- “...the reasonable determination must be based on commonsense judgments and inferences about human behavior.”
- TOTALITY OF CIRCUMSTANCES
- Hunch v. judgments/inferences/experience

14th Amendment

- Due Process
- Equal Protection

Pitfalls of Violating 4th or 14th

- 1538.5
- Juror nullification
- Reversal
- 1983



Scenarios

1-3

People v. Durazo
124 CA 4th 728 (2004)

- Mere hunch...racial profiling...

People v. Durazo

- Cal State University of Channel Islands
- Person living in on-campus apartments had received several threatening calls from Oxnard gang bangers

People v. Durazo

- Claimed callers were Mexican gang members who said they would come to his apartment the next day
- University officers started patrol

People v. Durazo

- Four days later, an officer observed a car turning left near the apartment
- Driver and passenger were Hispanic
- Plates came back to Oxnard
- Furtive movements

People v. Durazo

- They looked in the direction of the apartment – no traffic violations
- Officer followed for 3 miles, no law violations. Officer made a car stop based on Reasonable Suspicion.

People v. Durazo

“The officer observed that both Durazo and his passenger were Hispanic, but reliance on that immutable characteristic, without more, would amount to impermissible racial profiling.”

People v. Durazo

The holding...

- “Although the totality of circumstances gave the officer a ‘gut feeling’...a mere hunch is insufficient to create the reasonable suspicion necessary to justify a Fourth Amendment intrusion.”

People v. Hester

119 CA 4th 376 (2004)

- Gang shooting – 2 killed
- East Side Crips/Country Boy Crips
- That night gang detectives observed 3 cars
- 4 BMAs (15-25 years of age) in one car
- Stopped car (Reasonable Suspicion)

People v. Hester

- Detective: homicide, rival gang members territory, East Side Crips suspects
- East Side Crips would arm themselves for retaliation
- No Vehicle Code Violation

People v. Hester

- Look at totality of circumstances
- Detective inferred all individuals were gang members since he identified one as a gang member

People v. Hester

- “This conclusion, while one possible explanation... is unreasonable. There are far too many other possible explanations....”

People v. Hester

- “Cannot assume every Black male adult ages 15 to 25 in this part of Bakersfield are East Side Crips.”
- “These conclusions are far too consistent with **racial profiling** to be constitutionally permissible.”

DEVELOPING

FOX NEWS
channel







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